

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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BRUCE RICHARDS and AUGUST OESS,  
Plaintiffs in Error,  
vs.

THE UNITED STATES OF AMERICA,  
Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court of the  
Western District of Washington, Southern Division.

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FILED  
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F. D. MONCKTON,  
CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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### **Names and Addresses of Attorneys.**

CHARLES O. BATES, Esquire, National Realty Building, Tacoma, Washington,

CHARLES T. PETERSON, Esquire, National Realty Building, Tacoma, Washington,

GEORGE DYSART, Esquire, Centralia, Washington,

JOHN T. WELSH, Esquire, South Bend, Washington,

MARTIN C. WELSH, Esquire, South Bend, Washington,

C. D. CUNNINGHAM, Esquire, Centralia, Washington,

Attorneys for Plaintiff in Error.

ROBERT C. SAUNDERS, Esquire, United States Attorney, 310 Federal Building, Seattle, Washington,

F. R. CONWAY, Esquire, Assistant United States Attorney, 324 Federal Building, Tacoma, Washington,

Attorneys for Defendant in Error. [1\*]

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### **Praeipice for Transcript of Record.**

To the Clerk of the Above-named Court:

You will please prepare and certify, to constitute the record on appeal of the above-entitled cause, typewritten copies of the following papers, omitting all captions, excepting the captions to the indictment, omitting all verifications, acceptances of ser-

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\*Page number appearing at foot of page of original certified Transcript of Record.

vice, file-marks and other endorsements, said transcript of record to be certified and forwarded to and filed in the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, to be printed there according to the rules of said Circuit Court of Appeals:

1. This praecipe.
2. Indictment.
3. Arraignment and pleas of defendants Richards and Oess.
4. Recognizance of each of defendants Richards and Oess.
5. Verdict of jury.
6. Petition for new trial.
7. Order denying petition for new trial and fixing supersedeas bond.
8. Judgment and sentence of defendants Richards and Oess.
9. Supersedeas bonds and approval of each.
10. All orders extending time to present bill of exceptions.
11. Bill of exceptions.
12. Petition for writ of error.
13. Assignment of errors.
14. Order allowing writ of error.
15. The writ of error.
16. Citation in error.
17. Clerk's certificate.

Dated July 18th, A. D. 1919.

GEORGE DYSART,  
CHARLES O. BATES,  
CHARLES T. PETERSON,

Attorneys for Defendants Richards and Oess. [2]

*In the District Court of the United States of America  
for the Western District of Washington, South-  
ern Division.*

Of the February Term in the year, 1919.

No. 2728.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

W. F. TOLES, J. P. SYMONS, BRUCE RICH-  
ARDS and AUGUST OESS,

Defendants.

**Indictment.**

VIO. SEC. 240, C. C.

The United States of America,  
Western District of Washington,  
Southern Division,—ss.

The grand jurors for the United States of Amer-  
ica, empaneled and sworn in the District Court of the  
United States for the Southern Division of the West-  
ern District of Washington, at the February Term  
thereof in the year 1919, and inquiring for that divi-  
sion and district, upon their oath present:

That on the 7th day of February, in the year of  
our Lord nineteen hundred and nineteen, at Cen-  
tralia, in Lewis County, in the State of Washington,  
and in the Southern Division of the Western District  
of Washington, and within the jurisdiction of this  
court, one W. F. Toles, and one J. P. Symons, and  
one Bruce Richards, and one August Oess, and one

Joe Lucas, and one J. H. Boomer, and divers other persons to the grand jurors unknown, did commit the crime of conspiracy to commit an offense against the United States of America, to wit, to commit a violation of Section 240 of the Criminal Code of the United States, committed as follows, that is to say:

That at the time and place aforesaid, the said W. F. Toles, and J. P. Symons, and Bruce Richards, and August Oess, and Joe Lucas, and J. H. Boomer, and said other persons to the grand jurors unknown, did knowingly, feloniously, unlawfully and wickedly conspire, combine, confederate and [3] agree together among themselves to ship and cause to be shipped from the State of California into the State of Washington certain packages, the number and a more particular description of which are to the grand jurors unknown, of spirituous intoxicating liquor, to wit, whiskey, without such packages being so labeled on the outside covers thereof as to plainly show the name of the consignee thereof, the nature of the contents thereof or the quantity contained therein.

And the grand jurors aforesaid do further present and charge that at the time and the place aforesaid, to effect the object of said conspiracy, the said W. F. Toles did give, pay and deliver to one Joe Lucas the sum of Forty Dollars, and the said J. P. Symons did give, pay and deliver to the said Joe Lucas the sum of Forty Dollars, and the said Bruce Richards did give, pay and deliver to the said Joe Lucas the sum of Two Hundred and Fifty Dollars, and the said August Oess did give, pay and deliver to the said Joe Lucas the sum of Four Hundred Dollars; contrary to

the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

ROBT. C. SAUNDERS,  
United States Attorney.

F. R. CONWAY,  
Assistant United States Attorney. [4]

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**Journal Entry Showing Arraignment and Pleas of  
Defendants Richards & Oess.**

At a regular session of the United States District Court for the Western District of Washington, Southern Division, held at Tacoma, on the 12th day of May, 1919, the Honorable EDWARD E. CUSHMAN, United States District Judge presiding, among other proceedings, were the following truly taken and correctly copied from the journal of said court, to wit:

No. 2728.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

W. F. TOLES, J. P. SYMONS, BRUCE RICHARDS and AUGUST OESS,

Defendants.

**Arraignment and Plea.**

Comes now on this 12th day of May, 1919, the above-named defendants W. F. Toles, J. P. Symons, Bruce Richards and August Oess into open court,

each in his own proper person and accompanied by John T. Welsh as their counsel, for arraignment under the indictment herein returned against them in the above-entitled cause, and being asked as to his true name, he answers that his name is as in the indictment stated. The reading of the indictment being waived, defendants are interrogated as to their plea herein, and each answers for himself that he is not guilty as in the indictment charged, whereupon it is ordered that trial of this cause be heard on Wednesday, May 14, 1919, second case. [5]

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**Recognizance for Appearance Before United States Court (Bruce Richards).**

BE IT REMEMBERED, that on this 10th day of May, A. D. 1919, before me, a United States Commissioner for the said Western District of Washington, personally came Bruce Richards, as principal, and Dan Salzer and Wm. Hoss, as sureties, and jointly and severally acknowledged themselves to owe the United States of America the sum of Fifteen Hundred Dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to wit:

THE CONDITION of this Recognizance is such, that if the said Bruce Richards shall personally appear before the U. S. Dist. Court of the United States, in and for the District aforesaid, at Tacoma, Wash., on the first day of the next regular term thereof, and then and there to answer to the charge set forth in a true bill of indictment returned by the

Grand Jurors of the Western District of Washington at the city of Tacoma, Washington, on the 8th day of May, 1919, and then and there abide the judgment of the said Court, and not depart without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

BRUCE RICHARDS. (Seal)

DAN SALZER. (Seal)

WM. HOSS. (Seal)

Taken and acknowledged before me on the day and year first above written.

[Commissioner's Seal] W. A. WESTOVER,  
United States Commissioner as Aforesaid.

United States of America,  
Western District of Washington,—ss.

Dan Salzer, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at Centralia in the County of Lewis, in said District, that he is a freeholder in the State of Washington, that he is worth the sum of Fifteen Hundred Dollars, over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of a brick block at Lot 1, B. 5, [6] Washington's original plat of Centralia, Wash., value \$1500.00. That he is unmarried.

(Affiant's signature) DAN SALZER.

Sworn to and subscribed before me, this 10th day of May, A. D. 1919.

[Commissioner's Seal] W. A. WESTOVER,  
United States Commissioner as Aforesaid.

United States of America,  
Western District of Washington,—ss.

Wm. Hoss, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at Centralia, in the County of Lewis, in said District, that he is a freeholder in the State of Washington, that he is worth the sum of Fifteen Hundred Dollars, over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of one brick building on lot at No. 118 North Tower Avenue, Centralia, Wash., value \$10,000.00, and other real estate in Centralia \$15,000.00. That he is unmarried.

(Affiant's signature) WM. HOSS.

Sworn to and subscribed before me, this 10 day of May, A. D. 1919.

[Commissioner's Seal] W. A. WESTOVER,  
United States Commissioner Aforesaid.

The within bond approved by me May 18, 1919.

W. A. WESTOVER,  
U. S. Com. for Western Dist. of Washington, Resid-  
ing at Chehalis, Wash. [7]

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**Recognizance for Appearance Before United States  
Court (August Oess).**

BE IT REMEMBERED, that on this 10th day of May, A. D. 1919, before me, a United States Commissioner for the said Western District of Washington, personally came August Oess, as principal, and Ralph H. Moore and George Hugh, sureties, and



jointly and severally acknowledged themselves to owe the United States of America the sum of Fifteen Hundred Dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to wit:

THE CONDITION of this Recognizance is such, that if the said August Oess shall personally appear before the U. S. District Court of the United States, in and for the District aforesaid, at Tacoma, Wash., on the first day of the next regular term thereof, and then and there to answer to the charge set forth in a true bill of indictment returned by the Grand Jurors of the Western District of Washington at the city of Tacoma, Washington, on the 8th day of May, 1919, and then and there abide the judgment of the said Court, and not depart without leave thereof, then this recognizance to be void, otherwise to remain in full force and virtue.

AUGUST OESS. (Seal)

RALPH H. MOORE, (Seal)

GEORGE HUGH. (Seal)

Taken and acknowledged before me on the day and year first above written.

[Commissioner's Seal] W. A. WESTOVER,  
United States Commissioner as Aforesaid.

United States of America,  
Western District of Washington,—ss.

Ralph Howard Moore, a surety on the annexed recognizance, being duly sworn, and says that he resides at Centralia, in the County of Lewis in said District, that he is a freeholder in the State of Washington, that he is worth the sum of Fifteen Hundred

Dollars, over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of 166 acres of farm [8] land in Sec. 4 (NW.  $\frac{1}{4}$ ), 11, 16 or 17, in extreme northern part of Yakima Co., Wash., Value \$2,000.00, unencumbered. That he is unmarried.

(Affiant's signature.)

RALPH HOWARD MOORE.

Sworn and subscribed before me this 10 day of May, A. D. 1919.

[Commissioner's Seal] W. A. WESTOVER,  
United States Commissioner as Aforesaid.

United States of America,  
Western District of Washington,—ss.

George Hugh, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at Centralia in the County of Lewis in said District, that he is a freeholder in the State of Washington, that he is worth the sum of Fifteen Hundred Dollars, over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of 90 feet front in Lots 7, 8 & 9, Block No. 14, Chehalis Avenue, Centralia, value \$2500.00, unencumbered. Two lots in Galvin Add. to Centralia on South Tower Ave., value \$500.00. That he is unmarried.

(Affiant's signature.) GEORGE HUGH.

Sworn to and subscribed before me this 10th day of May, A. D. 1919.

W. A. WESTOVER,  
United States Commissioner as Aforesaid.

I certify that I personally examined the sureties in the above bond, and that I approved the same.

[Commissioner's Seal] W. A. WESTOVER,  
U. S. Com. for Western Dist. of Washington, Resid-  
ing at Chehalis, Wash. [9]

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### Verdict.

We, the jury empanelled in the above-entitled cause, find that the defendant W. F. Toles is not guilty as charged in the indictment; and that the defendant Bruce Richards is guilty as charged in the indictment; and that the defendant August Oess is guilty as charged in the indictment, and that the defendant J. P. Symons is not guilty as charged in the indictment.

FRED EIDEMILLER,  
Foreman.

We, the jury, do recommend clemency, relative to Bruce Richards and August Oess.

FRED EIDEMILLER,  
Foreman. [10]

---

### **Motion for New Trial by Defendants Bruce Richards and August Oess.**

Comes now the defendants Bruce Richards and August Oess, and each of them, and move the above-named court to set aside the verdict of the jury in the above-entitled action as to defendants Bruce Richards and August Oess, and to grant to said defendants Bruce Richards and August Oess a new trial for

the following reasons, to wit:

I.

Because the verdict of the jury rendered against the defendants, Bruce Richards and August Oess, and each of them, is contrary to the evidence and is against the evidence.

II.

Because the verdict of the jury rendered as to these defendants, and each of them, is contrary to, and is against the law.

III.

Because the evidence in the above-entitled action is not sufficient upon which to base a verdict of guilty against said defendants Bruce Richards and August Oess, or against any or either of them.

IV.

Because there is a material and fatal variance between the evidence and proofs and the indictment filed in said action and upon which these two defendants, and each of them, was tried, because these two defendants were charged with one specific offense and tried for under a different offense.

V.

Because of errors of law occurring at and in the trial of these two defendants, and excepted to by these defendants, and each of them, at the time.

VI.

Because the jury in the above-entitled action was, after the jury, and each member thereof was sworn and empaneled to try said action, and these two defendants, said jury was permitted to, and did separate during the trial of said action, and before the

[11] final submission of said cause, and said action to the jury for their deliberation and consideration, the said jury and the members thereof were not kept together during the trial of said action, but were permitted to separate each two and until the time when said action was finally submitted to said jury for their consideration of the verdict in said action.

VII.

Because the evidence in the above-entitled action conclusively shows that neither of the defendants, Bruce Richards or August Oess is guilty of the crime charged in the indictment, and the evidence in said action is insufficient to sustain a verdict of guilty against any, or either of the defendants, Bruce Richards and August Oess.

VIII.

Because these two defendants were charged with conspiring with Joe Lucas and one J. H. Boomer, and the center figure, alleged in the indictment, was Joe Lucas, around whom, as alleged in the indictment, all revolved and conspired, and said Joe Lucas and said J. H. Boomer were, and each of them, was acquitted in that the indictment as to each in this cause was dismissed, and this in fact in law acquitted each of these defendants.

GEO. DYSART,

C. D. CUNNINGHAM,

J. T. WELSH,

Attorneys for Defendants Bruce Richards and August Oess. [12]

**Journal Entry Showing Order Denying Petition for  
New Trial and Fixing Amount of Supersedeas  
Bond.**

At a regular session of the United States District Court for the Western District of Washington, Southern Division, held at Tacoma on the 9th day of June, 1919, the Honorable EDWARD E. CUSHMAN, United States District Judge, presiding, among other proceedings had were the following truly taken and correctly copied from the journal of said Court, to wit:

No. 2728.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

W. F. TOLES, J. P. SYMONS, BRUCE RICHARDS AND AUGUST OESS,

Defendants.

**Hearing on Motion for a New Trial.**

Now, on this 9th day of June, 1919, this cause comes on for a hearing on a motion for a new trial, the Government being represented by F. R. Conway, Assistant District Attorney, and defendants Bruce Richards and August Oess being represented by Messrs. John T. Welsh and George Dysart, argument of the motion is made to the Court who denies the motion and exception is allowed. Upon motion of the Government's attorney for judgment at this time, the Court proceeds to impose sentence upon de-

endants Bruce Richards and August Oess, execution of which is stayed until 5 P. M. on June 10, 1919, before which time and hour a supersedeas bond each in the sum of \$2,500 for the defendants Bruce Richards and August Oess is to be approved by W. A. Westover, United States Commissioner for the Western District of Washington, and filed in this cause. [13]

---

At a regular session of the United States District Court for the Western District of Washington, Southern Division, held at Tacoma, on the 9th day of June, A. D. 1919, the Honorable EDWARD E. CUSHMAN, presiding, among other proceedings had were the following, truly taken and correctly copied from the Judgment and Decree record of said Court, to wit:

No. 2728.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

W. F. TOLES, J. P. SYMONS, BRUCE RICHARDS AND AUGUST OESS,

Defendants.

**Judgment and Sentence of Bruce Richards.**

Comes now on this 9th day of June, 1919, the above-named defendant Bruce Richards into open court in his own proper person for sentence at this time, and being informed by the Court of the indictment heretofore returned against him, and of his conviction of

record herein, he is asked whether he has any legal or just cause to show why sentence should not be passed and judgment had against him at this time, he nothing says save as before he hath said. Wherefore by reason of the law and the premises, it is considered, ordered and adjudged that the defendant Bruce Richards is guilty of the crime of violation of Section 240, C. C., and that he be punished by being sentenced to be confined in the Lewis County jail or in such other prison as may hereafter be provided for the confinement of persons convicted of offenses [14] against the laws of the United States for the period of Sixty days and to pay a fine of \$500.00. Defendant is hereby remanded into the custody of the United States Marshal to carry this sentence into execution, execution of which is stayed until 5 P. M. on June 10, 1919.

### **Judgment and Sentence of August Oess.**

Comes now on this 9th day of June, 1919, the above-named defendant August Oess into open court in his own proper person, for sentence at this time, and being informed by the Court of the indictment heretofore returned against him in this cause and of his conviction of record herein, he is asked whether he has any legal or just cause why sentence should not be passed and judgment had against him at this time, he nothing says save as before he hath said. Wherefore by reason of the law and the premises, it is considered, ordered and adjudged that the defendant August Oess is guilty of the crime of violation of Section 240, C. C., and that he be punished by being sen-



tenced to be confined in the Lewis County Jail or in such other prison as may hereafter be provided for the confinement of persons convicted of offenses against the laws of the United States for the period of sixty days and to pay a fine of \$500.00. Defendant is hereby remanded into the custody of the United States Marshal to carry this sentence into execution, execution of which is stayed until 5 P. M. on June 10, 1919. [15]

---

**Supersedeas Bond of Bruce Richards.**

KNOW ALL MEN BY THESE PRESENTS, that we, Bruce Richards, the defendant as principal, and S. A. Reeves and W. M. Hoss, as sureties, are held and firmly bound under the United States of America in the penal sum of Twenty-five Hundred (\$2,500.00) Dollars, lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves and each of our heirs and executors and administrators, jointly and severally, firmly by these presents. Sealed with our seal and dated this 10th day of June, 1919.

The condition of the above obligation is such that WHEREAS, the above-named principal, Bruce Richards, defendant in the above-entitled action, having been convicted of the crime of conspiracy to commit an offense against the United States of America, to wit, to commit a violation of Section 240, of the Criminal Code of the United States, by a verdict of the jury in the above-entitled court, and having been

sentenced by the Judge of the above-entitled court on the 9th day of June, 1919, to be confined in the County Jail of Lewis County, Washington, for a period of sixty (60) days, and to pay a fine of Five Hundred (\$500.00) Dollars, and

WHEREAS, the said defendant having announced his desire to appeal from said judgment and to have the same reviewed by the United States Circuit Court of Appeals of the Ninth Circuit, and immediately after sentence having applied in open court to fix the amount of supersedeas bond herein for the purpose of such appeal, and review, and the Court having fixed such bond in the sum of Twenty-five Hundred (\$2,500.00) Dollars with at least two sureties,

NOW, THEREFORE, if the said Bruce Richards, the principal herein, diligently and properly prosecute his appeal or writ of error herein and at all times render himself amenable to and abide the processes and orders of the Court during the pendency of such appeal, or writ of error, and shall duly surrender himself in execution of the sentence imposed [16] upon him in this cause, upon its being affirmed, modified or upon said appeal or writ of error being dismissed by the said United States Circuit Court of Appeals of the Ninth Circuit or in case the judgment of the United States District Court be reversed and the cause remanded for a new trial, if he shall appear before the United States District Court to which the cause may be remanded and submit himself and abide the orders and processes thereof and abide any process or processes issued by either of said courts, then

this obligation shall be null and void; otherwise to remain in full force and virtue.

The sureties herein hereby obligate themselves that in case of a breach of the conditions hereof, the Court may, upon notice to them of not less than ten (10) days, proceed summarily in this action to ascertain the amount such sureties are bound to pay on account of such breach and render judgment thereof against them and award execution therefor.

In witness whereof we have hereunto set our hands and seals this 10th day of June, 1919.

BRUCE RICHARD. (Seal)

S. A. REEVES. (Seal)

WM. HOSS. (Seal)

United States of America,  
Western District of Washington,  
Southern Division,—ss.

This is to certify on this 10th day of June, 1919, before me, the undersigned United States Commissioner, in and for said district, personally came Bruce Richards, S. A. Reeves and W. M. Hoss, to me known to be the individuals described in and who executed the within instrument in my presence and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

[Commissioner's Seal] W. A. WESTOVER,  
United States Commissioner, Western District of  
Washington, at Chehalis therein. [17]

United States of America,  
Western District of Washington,  
Southern Division,—ss.

S. A. Reeves, a surety on the annexed recognizance, being duly sworn, deposes and says: That he resides at Centralia, Washington, in the county of Lewis in said district; that he is a freeholder in the county of Lewis; that he is worth the sum of \$5,000.00 over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of real and personal property, situate in Lewis County, Washington; that he is a single man; that all of said property is his sole and separate property.

S. A. REEVES.

Sworn and subscribed to before me this 10th day of June, 1919.

[Commissioner's Seal] W. A. WESTOVER,  
United States Commissioner, Western District of  
Washington, at Chehalis therein.

United States of America,  
Western District of Washington,  
Southern Division,—ss.

W. M. Hoss, a surety on the annexed recognizance, being duly sworn, deposes and says: That he resides at Centralia, Washington, in the county of Lewis in said district; that he is a freeholder in the county of Lewis; that he is worth the sum of \$5,000.00 over and above all his just debts and liabilities, in property subject to execution and sale and that his property consists of real and personal property situate in

Lewis County, Washington; that he is a single man; that all of said property is his sole and separate property.

WM. HOSS.

Subscribed and sworn to before me this 10th day of June, 1919.

[Commissioner's Seal] W. A. WESTOVER,  
United States Commissioner, Western District of  
Washington at Chehalis therein. [18]

The above bond examined and approved by me this 10th day of June, 1919.

[Commissioner's Seal] W. A. WESTOVER,  
United States Commissioner, Western District of  
Washington, Residing at Chehalis, Washington.  
[19]

---

**Supersedeas Bond of August Oess.**

KNOW ALL MEN BY THESE PRESENTS, that we, August Oess, the defendant as principal, and Earnest Rector and George Hughes, as sureties, are held and firmly bound under the United States of America in the penal sum of Twenty-five Hundred (\$2,500) Dollars, lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves and each of our heirs and executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seal and dated this 10th day of June, 1919.

The condition of the above obligation is such that  
WHEREAS, the above-named principal, August

Oess, defendant in the above-entitled action, having been convicted of the crime of conspiracy to commit an offense against the United States of America, to wit, to commit a violation of Section 240 of the Criminal Code of the United States, by a verdict of the jury in the above-entitled court, and having been sentenced by the Judge of the above-entitled court on the 9th day of June, 1919, to be confined in the County Jail of Lewis County, Washington, for a period of sixty (60) days, and to pay a fine of Five Hundred (\$500.00) Dollars; and

WHEREAS, the said defendant having announced his desire to appeal from said judgment and to have the same reviewed by the United States Circuit Court of Appeals of the Ninth Circuit, and immediately after sentence having applied in open court to fix the amount of supersedeas bond herein for the purpose of such appeal, and review, and the Court having fixed such bond in the sum of Twenty-five Hundred (\$2,500) Dollars with at least two sureties: [20]

NOW, THEREFORE, if the said August Oess, the principal herein, diligently and properly prosecute his appeal or writ of error herein and at all times render himself amenable to and abide the processes and orders of the Court during the pendency of such appeal, or writ of error, and shall duly surrender himself in execution of the sentence imposed upon him in this cause, upon its being affirmed, modified or upon said appeal or writ of error being dismissed by the said United States Circuit Court of Appeals of the Ninth Circuit, or in case the judgment of the United States District Court be reversed and the

cause remanded for a new trial, if he shall appear before the United States District Court to which the cause may be remanded and submit himself and abide the orders and processes thereof and abide any process or processes issued by either of said courts, then this obligation shall be null and void; otherwise to remain in full force and virtue.

The sureties herein hereby obligate themselves that in case of a breach of the conditions hereof, the Court may upon notice to them of not less than ten (10) days, proceed summarily in this action to ascertain the amount such sureties are bound to pay on account of such breach and render judgment thereof against them and award execution therefor.

In witness whereof we have hereunto set our hands and seals this 10th day of June, 1919.

AUGUST OESS. (Seal)

ERNEST RECTOR. (Seal)

GEORGE HUGHES. (Seal)

United States of America,  
Western District of Washington,  
Southern Division,—ss.

This is to certify on this 10th day of June, 1919, before me, the undersigned United States Commissioner, in and [21] for said district, personally came August Oess, Earnest Rector and George Hughes, to me known to be the individuals described in and who executed the within instrument in my presence and acknowledged to me that they signed and sealed the same as their free and voluntary act

and deed for the uses and purposes therein mentioned.

[Commissioner's Seal] W. A. WESTOVER,  
United States Commissioner, Western District of  
Washington, at Chehalis therein.

United States of America,  
Western District of Washington,  
Southern Division,—ss.

Earnest Rector, a surety on the annexed recognizance, being duly sworn, deposes and says, that he resides at Centralia, Washington, in the County of Lewis in said district; that he is a freeholder in the County of Lewis; that he is worth the sum of \$5,000.00 over and above all his just debts and liabilities, in property subject to execution and sale and that his property consists of real and personal property, situate in Lewis County, Washington; that he is a single man; that all of said property is his sole and separate property.

ERNEST RECTOR.

Sworn and subscribed to before me this 10th day of June, 1919.

[Commissioner's Seal] W. A. WESTOVER,  
United States Commissioner, Western District of  
Washington at Chehalis therein. [22]

United States of America,  
Western District of Washington,  
Southern Division,—ss.

George Hughes, a surety on the annexed recognizance, being duly sworn, deposes and says, that he resides at Centralia, Washington, in the county of



Lewis in said district; that he is a freeholder in the county of Lewis; that he is worth the sum of \$5,000.00 over and above all his just debts and liabilities, in property subject to execution and sale and that his property consists of real and personal property situate in Lewis County, Washington; that he is a single man; that all of said property is his sole and separate property.

GEORGE HUGHES.

Sworn and subscribed to before me this 10th day of June, 1919.

[Commissioner's Seal] W. A. WESTOVER,  
United States Commissioner, Western District of  
Washington, at Chehalis Therein.

The above bond examined and approved by me this 10th day of June, 1919.

[Commissioner's Seal] W. A. WESTOVER,  
United States Commissioner, Western District of  
Washington, Residing at Chehalis, Washington.

[23]

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**Order Extending Time in Which to Present and File  
a Bill of Exceptions.**

This cause came regularly on to be heard this 26th day of May, 1919, upon the application of the defendants, August Oess and Bruce Richards, for an extension of time in which to prepare, file, serve and have certified a bill of exceptions in the above-entitled cause, and the Court being fully advised in the premises, it is here now

ORDERED that the defendants have until the

19th day of June, 1919, in which to prepare, file and present to this Court a bill of exceptions as prayed for herein.

Done in open court this 26th day of May, 1919.

EDWARD E. CUSHMAN,  
Judge. [24]

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**Order Extending Time to July 19, 1919, to Prepare and Serve Bill of Exceptions.**

Now, on this 14th day of June, A. D. 1919, this cause came on for hearing on the application of the attorneys for the defendants, Richards and Oess, for an order extending the time for the preparation and service of bill of exceptions herein.

On consideration whereof, IT IS BY THE COURT ORDERED, that said defendants have up to and including the 19th day of July, A. D. 1919, in which to prepare and serve bill of exceptions herein.

EDWARD E. CUSHMAN,  
Judge. [25]

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**Bill of Exceptions.**

BE IT REMEMBERED that in the trial of this cause on the 16th day of May, A. D. 1919, the Honorable EDWARD E. CUSHMAN presiding, the plaintiff appearing by their respective counsel, the jury was duly empaneled, and the following proceedings had:

**Testimony of Joe Lucas, for Plaintiff.**

JOE LUCAS, being duly sworn as a witness for plaintiff, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

My name is Joe Lucas; I live in Centralia; am engaged in theatrical business there, for the past six years; I know the defendants and one J. H. Boomer and Jack Platt. I contemplated, about February 7th last, a trip from Centralia to San Francisco, and about three weeks before I left I had a talk with August Oess, one of the defendants, in regard to it. He asked me if I would bring him back some whiskey, and I said, "Yes." We had several conversations along the same [26] line. These conversations with Oess always referred to when I was going to California. I also had a conversation on the same subject with the defendant, Bruce Richards, about the same time. He asked me if I was going to Frisco and would I bring him back some whiskey, and I told him "yes." I had several subsequent conversations with him. I went to San Francisco on February 8th this year, and about two weeks before I left, Mr. Richards gave me \$200.00 at one time and \$40.00 at another time, in cash. I asked him what kind of whiskey he wanted and he said he preferred bottled in bond in quart bottles.

I also had a conversation with the defendant Toles, and one with Boomer, and one with Mr. Symons, about bringing back whiskey for them. Toles gave

(Testimony of Joe Lucas.)

me \$40.00 and Symons \$50.00 to pay for whiskey to bring back for them. I told Symons that I was going to bring back some whiskey to Oess and Richards, and told Oess that I was going to bring Symons \$50.00 worth of whiskey.

A few days before I went away I had a talk with Oess and Richards and we discussed about buying whiskey and bringing it into Centralia, and Oess suggested that he drive his truck along the prairie and unload the booze on the prairie into his truck, and Richards says: "That's all right for me." Oess paid me the money for the whiskey about twelve days before I went to Frisco; he gave me \$400.00 in bills. Before I went I bought 1,000 dry-cell batteries, or covers, and I shipped them to San Francisco. I bought these a long time ago. At that time, had no intention of ever sending whiskey in them; that occurred to me afterwards. I shipped them down to San Francisco about six or seven days before I went. They were shipped there to bring back whiskey in. There had to be some work done on them and Jack Platt and myself did it on Fillmore [27] Street, San Francisco.

Bottle handed witness, who removed the cork and smelled of it, and said it was whiskey in the bottle, and that he recognized it as one of the same kind of contraptions that they fixed up in San Francisco.

Thereupon said dry-cell case and the bottle containing the whiskey were introduced and received in evidence and marked as Plaintiff's Exhibit 1.

I fixed 1,000 of the little dry battery cases the same

(Testimony of Joe Lucas.)

as this one is fixed. There was whiskey in each one. I got the whiskey in San Francisco. I got the money to buy it from my friends, Richards, Oess, Toles, Symons, and Boomer. Jack Platt helped me fill these bottles. He did most of it. After they were filled, they were filled in regular battery packing cases, and made ready for shipment, and then I left San Francisco.

Box taken out of trunk and shown witness, who testifies that he recognized it with the tag on it. The tag was on the box when it was shipped.

Box with tag offered in evidence and received, marked Plaintiff's Exhibit 2.

Witness shown big trunk and testified that the trunk was his and had lots to do with the shipping of the whiskey. Besides the whiskey contained in the dry-cells, I bought three cases from San Francisco—12 quarts to the case—two cases of Old Taylor and one case of Sunnybrook. It was packed in a regular shipping case.

Box containing dry-cells shown witness who testified that the dry-cell packages were packed in the same manner [28] in which the box was packed, and they were then ready for shipment. I did not have anything to do with the delivery for shipment; I left that for Platt to attend to. The shipment was to be made on a boat, by steamer to Seattle. From San Francisco, I went to my father's ranch at Red Bluffs, California. I then went to Seattle, reaching there February 28th. I first learned of the liquor shipment in Seattle, the next day after I got there.

(Testimony of Joe Lucas.)

From there I went to Centralia. About two days after I arrived there, I saw Oess, and told him that I did not ship any whiskey, and that as soon as I got around to it, I would give him his money back. The next day or two I met Oess and Mr. Richards in my apartments. I did not have sufficient money to give them their money back so I told them the facts—that the whiskey had been lost, and showed them a newspaper clipping where the whiskey had been taken, and where Platt was in jail. I told them I had trouble on the other end, which would take some money. After I got through telling Oess and Richards, Oess says: “Joe, you were to bring this whiskey up in a pipe-organ and I do not know, if I had known it was to come in dry batteries, whether I would have gone into it or not.” Richard said that he thought it was to be brought up in the pipe-organ also, and seemed to be surprised, and expressed some sentiment that we lost it. They said they figured they should not lose their money and I told them to think it over for a couple of days. If they thought they were right, and I was wrong, that they ought to have their money back, to come to me and I would give it to them. Afterwards, Mr. Richards and Oess and Boomer came to see me at my apartments. Richards says: “We came for our whiskey or our money.” I says: “I cannot give you the whiskey,” and [29] then my wife says: “Give them back their money and pay them in a check.” Then it was talked over that we ought to do something for Platt. Mr. Richards says: “Yes, we got him into this, we

(Testimony of Joe Lucas.)

ought to help him out.” Mr. Richards had given me \$240.00, so I gave him a check in return for \$200.00. Oess had given me \$400.00, and I gave him a check for \$350.00, and Boomer had given me \$50.00, and I gave him a check for \$45.00.

Exhibit 3, for identification, handed witness, who testified:

“This is the check I gave August Oess, \$350.00.”

Exhibit 4, for identification, showed witness, who testified:

“This is the check I gave Richards for \$200.00.”

Exhibits 3 and 4 have been paid.

Checks, exhibits 3 and 4, for identification, offered and admitted in evidence and marked Plaintiff’s Exhibits 3 and 4.

After that Mr. Richards was in my apartment—my wife and I and a man named McCormick was there. I saw Richards coming, and I motioned him to come upstairs, and I motioned him to go back, and then for him to stay out there, as I did not want him upstairs. I did not want to get him in trouble by his coming up there when there was a Revenue man there, but he came up there. The Revenue man jumped behind the piano. As Mr. Richards came in, he said: “We’re going to pretend that this whiskey was ordered in quart bottles and that our whiskey was delivered and was taken from the Milwaukee depot, and the whiskey that came in is not ours.” He told me that McCormick said I told it all; that I had told McCormick that I had told it all. I did not answer. That was about as far as I [30] re-

(Testimony of Joe Lucas.)

member about that conversation.

At another time when Richards, Boomer and Oess were present, my wife advised Richards to plead guilty; and he said he would if he knew he could get a fine and not have to go to jail, but he said he would not do one day in jail for \$5,000.00, and that he would spend \$5,000.00 to keep out of jail, if necessary; that if he thought he was going to be convicted, he would leave. He also said even if they promised them any leniency, that they were not going to let anyone off with a fine; they would take them up separately and fine them and put them in jail. That is the reason he would not plead guilty.

Mr. WELSH.—We move to strike that evidence out, in reference to whether they would plead guilty, on the ground that it is immaterial.

The COURT.—Motion is denied and exception allowed.

Richards also said that if they would convince him that the liquor was lost, he would be satisfied.

At another time, in my apartment, in the presence of Oess and Boomer, Richards said that somebody had squealed; that he thought there was only to be four in this; he said, too many in it, as he looked at it. If he had thought there was going to be more than four in it, he would not have gone into it. He understood that Oess, myself and himself, and Jerry Driscoll were the only ones in it. I didn't hear him make any complaint about Boomer.



(Testimony of Joe Lucas.)

Cross-examination.

(By Mr. WELSH.) [31]

There were other parties in this deal whose names I have not mentioned; I knew that all the time; this is the first time I have mentioned it; I did not tell the Government officials that there were other parties in this deal. I told a number of people around Centralia, before I went down to San Francisco, that I was going down there to buy a pipe-organ, and that was pretty generally understood around there. When I left San Francisco some was packed and some of it was not packed. I did not ship anything. The trunk and the shipment went together. Platt did the packing and filled the dry-cells with liquor. I did not have a thing to do with that. I did not see this box shipped, and do not know whether it was shipped all together or not. I could not say that I did see this box packed, nor I could not swear that it was the same box that was packed in San Francisco and shipped to Seattle, because I did not put my own mark on it to identify it. I do not know whether the dry-cells were full or empty when they left San Francisco.

Mr. WELSH.—We move to strike out all of the evidence about that box.

The COURT.—It having gone in without objection, the motion will be denied.

I did not bring any whiskey with me. I had three cases shipped from San Francisco; that was in addition to the dry-cells shipment, but I could not positively swear that they were ever shipped. I do not

(Testimony of Joe Lucas.)

know in my own knowledge that this box and its contents ever left San Francisco, or that these dry-cells were filled with whiskey. I did not fill any [32] dry-cells down there myself, nor had anything to do with filling them. I saw some of the dry-cells filled, but could not swear that these are the dry-cells I saw filled.

I first spoke to the defendant, Oess, about this transaction about three weeks before I went to San Francisco. I did not tell him at that time that I was going down to buy a pipe-organ, but did tell him that five or six days later. Oess paid me this money about a week before I left for San Francisco, and it was after my second conversation with him. Jerry Driscoll was present when Oess paid me the money. He paid me in currency. At that time I told him the names of the other parties who had contributed money to this enterprise. I gave him only part of the names. At the time Oess paid me the money, in the presence of Driscoll, I did not tell him anything about whiskey. At the time I took the money, nothing was mentioned about a pipe-organ. I told Mr. Oess that I was going to bring the whiskey back in a pipe-organ, and he did not know that I was going to bring it back in the manner in which I did, or that I ever brought it back that way.

I first talked to Bruce Richards about the matter three days after I talked to Oess. He brought the subject up. Oess was present at one time when I had a talk with Richards, prior to my going to San Francisco—probably a week after my first conversa-

(Testimony of Joe Lucas.)

tion. I am not sure whether we talked the matter over there or not. Bruce paid me \$200.00 at first, and \$40.00 afterwards, making \$240.00 in all. The money was paid on the street, in cash. I told him that I was going to purchase a pipe-organ. [33]

Redirect Examination.

(By Mr. CONWAY.)

I told Oess that I was to load the whiskey in the large pipes of the pipe-organ, and he said it was a very clever stunt. He did not think it would ever be caught. I told Richards the same thing, and talked to Bill Toles about it. I am not sure that I told Symons.

Q. Did you explain to Oess, Richards and to Toles, that when you shipped the whiskey up in the pipes of the pipe-organ you were going to put the name of the consignee and the contents on the pipes?

Mr. WELSH.—That is leading and suggestive. We object to it.

The COURT.—Objection overruled.

Mr. WELSH.—We except.

A. I said nothing about labeling it, or anything; and I said nothing about as to who it would be consigned to; in fact, when I went down there, I did not know how I would do it.

### **Testimony of Jack Platt, for Plaintiff.**

JACK PLATT, being sworn as a witness for plaintiff, testified as follows:

My name is Jack Platt; I know Joe Lucas; I made

(Testimony of Jack Platt.)

a trip with him from Centralia to San Francisco, the first part of February, 1919.

Q. Had you done anything preparatory to your trip to San Francisco?

Mr. WELSH.—Objected to as incompetent.

The COURT.—Overruled. [34]

Mr. WELSH.—Exception.

A. When I was down there I prepared some dry-cell batteries.

Mr. WELSH.—I ask that the answer be stricken as not responsive.

The COURT.—Motion denied.

Mr. WELSH.—Note an exception.

Q. Did you make any preparation in Centralia for the trip?      A. Yes.

Q. What did you do?

Mr. WELSH.—We object to that as incompetent, irrelevant, and immaterial.

The COURT.—Overruled.

Mr. WELSH.—Exception.

A. Made some tops for them cans of the dry-cell batteries.

(Witness examines exhibits heretofore placed before jury, and testified:)

I recognize that as the same sort of thing that I prepared. We just put these brass pieces and this screw on and then poured it in with tar. I prepared 500 in Centralia, packed them in a suitcase, and took them down to San Francisco. Joe Lucas went with me. After I got in San Francisco, I made some more of these tops and then I packed these cans full of

(Testimony of Jack Platt.)

bottles and filled them up with whiskey. I recognize Exhibit 1.

That is the sort of contraption that I fixed up down in San Francisco.

Q. What did you fill those little bottles with?  
[35]

Mr. WELSH.—We object to that as incompetent, hearsay as far as the defendants are concerned.

The COURT.—Objection overruled.

Mr. WELSH.—Exception.

A. Filled them bottles with whiskey. There was 1,000 of them. I put them in cans, like Exhibit 1, and packed them in packing cases and nailed them up.

Exhibit 2 is the same packing-case they were packed in; 125 in a box; Exhibit 2 is similar to the packing that was done in San Francisco. There were eight of these boxes so packed. I did not buy the whiskey that went into those bottles. It was brought up to the house where I was packing the cases and I filled the bottles and packed the cases myself. I first saw that big trunk in Centralia; Mr. Lucas had it; I saw it in San Francisco; I had it there; I got it from the Railroad station; it was shipped by express to Mr. Johnson; I took it up to the house where I rented, on Webster Street; I opened it and took out what I needed and filled up these cans. After I got through with it, I put in three cases of bonded goods, whiskey.

Exhibit 5 for identification is the bonded whiskey. It was Old Taylor and Sunnybrook in pint bottles.

(Testimony of Jack Platt.)

I recognize Exhibit No. 6 for identification as the same kind.

Mr. CONWAY.—I offer in evidence Exhibits 5 and 6.

Mr. WELSH.—Objected to, not identified.

The COURT.—Objection overruled. They will be admitted in evidence. [36]

Thereupon, said bottles of whiskey were marked as Government Exhibits 5 and 6.

Mr. WELSH.—Note an exception please.

After the packing was done in the trunk, I got a truck and had it taken to the Pacific Steamship Dock and shipped it by boat from San Francisco to Seattle in the name of H. Johnson, on the "Admiral Schley." I recognize this trunk as the one I shipped.

Thereupon, the trunk was offered and admitted in evidence, marked as Government's Exhibit 7.

I left San Francisco on the "Admiral Schley," the same boat I shipped the liquor on, about February 27th or 28th. The boat reached Seattle March 1st. I was arrested the first of March, in Seattle. I went to San Francisco at Mr. Lucas' suggestion. He had told me that he intended to ship up some whiskey.

#### Cross-examination.

(By Mr. WELSH.)

At the time I was arrested, the liquors were seized by the Government. I could not swear that the liquor introduced in evidence was the same liquor shipped. Of course, there are many bottles similar to that. I am pretty sure that these dry-cells were the same. I do not know of anybody else making

(Testimony of Jack Platt.)

any caps like that. I did not make the cans; I made the caps. Lots of batteries are just like these.

**Testimony of J. H. Boomer, for Plaintiff.**

J. H. BOOMER, being duly sworn as a witness for the plaintiff, testified as follows:

My name is J. H. Boomer; I live in Centralia; I know [37] · Joe Lucas, Bruce Richards, Mr. Symons, August Oess and Mr. Toles. In the latter part of January, or early part of February, 1919, I asked Mr. Lucas if he went to Frisco if he would slip me in some whiskey. He said he would, and I gave him a check for \$50.00. I heard it talked among myself, Oess and Richards that he was going to ship a pipe-organ back.

Q. When was it?

A. After the stuff had been seized.

Q. After it had been seized?      A. Yes, sir.

Mr. WELSH.—We move to strike that out.

The COURT.—Motion will be denied.

Mr. WELSH.—Exception.

Shortly after the liquor was seized in Seattle, I had a talk, in my store in Centralia, with Richards and Oess. They asked me if I had any money in the deal of getting liquor from San Francisco by Mr. Lucas. They told me that Mr. Lucas was trying to get away with this money, and would never ship the goods. I told them I would see Lucas. I went with them to Mr. Lucas. Oess told me that he had \$400.00 in the scheme. Richards told me that he had \$240.00 in the scheme. Oess and Richards claimed that

(Testimony of J. H. Boomer.)

Lucas shipped the stuff in batteries instead of the pipe-organ. They understood he was to ship it in quart bottles in this pipe-organ, and that is one thing they claimed that Lucas was defrauding us out of our money.

I was present with Oess and Richards in Lucas' apartment after that, when Richards said to Lucas: "We want our money or our whiskey." Lucas said he could not give them [38] the whiskey, because it was seized, and as far as the money, he didn't think he was entitled to lose it all after going to the expense of buying the whiskey; didn't think it was a fair deal for him to pay the money all back. We all agreed that it was fair and right to help Platt out, and Lucas paid us back the money we had given him, except that he took \$50.00 out of Oess' money, \$40.00 out of Richards,' and \$5.00 out of mine; that was to employ some attorney for Platt.

Q. Did Lucas at that time say anything about what he was going to do in connection with a possible criminal prosecution?

Mr. WELSH.—We object to that as immaterial, hearsay, incompetent and irrelevant.

The COURT.—Objection overruled. That is part of the same conversation.

Mr. WELSH.—Exception. This is where three or four were present.

A. Not that I remember, no, sir.

Q. Was the question of criminal liability discussed at that time. A. It was.

Mrs. Lucas gave us all a good talking to. She said



(Testimony of J. H. Boomer.)

we were all as guilty as Joe was, and if we did not keep our mouths shut, we would all get into trouble. Mr. Richards said he would not go to jail for \$5,000, and wanted to keep out of jail, and we all wanted to keep out of jail.

Later, Richards came into my store and said "I understand you made all those batteries in your back room and [39] furnished the batteries. I think you are just as guilty as Joe Lucas," and acted as though he wanted to fight, and that sort of thing. I never had any conversation with Oess afterwards. Some time after that I met Richards on the street and he said if Lucas and I would go ahead and defend ourselves, they would look out for themselves. He didn't mention any names, he just said "we."

Cross-examination.

(By Mr. WELSH.)

Mr. Richards came to my place of business at Centralia both before and after we were arrested. My business is electrical business, and we carry dry-cell batteries for sale. I don't remember of Richards ever coming in there and my taking him in the back room to show him anything. He claimed that Mr. Lucas had no business to ship liquor in the battery cans; it was supposed to be shipped in a pipe-organ, or in case lots; I do not know just how, and that is the only thing he did not like. I did not know how Lucas was going to ship the liquor, and, as far as I know, none of the other parties knew the manner or how it was to be shipped from San Francisco. [40]

**Testimony of George W. Berg, for Plaintiff.**

GEORGE W. BERG, a witness called by the Government, being duly sworn, testified as follows.

## Direct Examination.

(By Mr. CONWAY.)

My name is George W. Berg. I have been an employee of the Department of Justice for nine years. I recognize Government's Exhibit 1. It is whiskey in these dry-cell battery containers, shipped from San Francisco on the "Admiral Schley." I first saw it the first of March, this year. On the 28th of February, I was advised, through Agent Orr of San Francisco, that the shipment was enroute, and would reach Seattle on the "Schley." Orr arrived here the day previous, and he and I, on the morning of March 1st, met the "Schley" at Pier D, Seattle, and when the shipment was unloaded, we seized it and opened one of the cases there; found it to contain these dry-cell batteries and whiskey in these bottles. There were eight cases. The Government's Exhibit 2 is one of the cases. There were eight of these boxes just like Government's Exhibit 2. They were billed to Johnson S. & E. Company of Seattle, which is a fictitious address. There is no such place. These red cans were packed in the cases. This box is packed in the same way; 125 of these cells in each case packed similar to that. Bottles of whiskey similar to Government's Exhibit 1 were in those cans. Most of the whiskey was destroyed that same evening, with

(Testimony of George W. Berg.)

the exception of the exhibits that were used in Platt's trial and this here.

I first saw Government's Exhibit 7, this big trunk, in the hold of the "Schley." When the trunk finally came up, it was empty, with the exception of a package of [41] these labels. The trunk had been broken open in the hold. Immediately on the trunk coming up, we went down in the hold of the boat and made an examination there and found practically all the whiskey that had been taken and hid in different places of the hold, probably fifty or sixty pint bottles. Government's Exhibit 5 is one of them.

Government's Exhibit 6 shown witness, and he testified that it is a pint of Sunnybrook whiskey; that he first saw it in the hold of the ship at the time.

Government's identification 8 shown witness, and he testified that is one of the labels; that was in the package in the trunk at the time it came up on dock.

Thereupon said label was received in evidence marked as Government's Exhibit 8.

I talked with Jack Platt. Mr. Orr arrested him. He had on his person the shipping receipt, the original bill of lading covering that shipment.

On motion of Mr. Welsh, attorney for defendant, the testimony of this witness as to who broke open the trunk, and the testimony that they hid the whiskey around various parts of the ship, was stricken out.

**Testimony of John Berry, for Plaintiff.**

JOHN BERRY, being duly sworn as a witness for the Government, testified as follows:

## Direct Examination.

(By Mr. CONWAY.)

My name is John Berry. I am sheriff of Lewis County, Washington. I know the defendants and Joe Lucas and J. H. Bloomer. I saw the defendant Mr. Richards about the 8th or 9th of last February, and about the 8th or 9th of last March. [42] That was in Centralia. He showed me a Seattle newspaper containing an account of the arrest of Jack Platt and the seizure of the dry-cell batteries in Seattle. He said he wanted me to find out who was behind Platt in the shipment of the dry-cell batteries. He said he was thinking of going to Vancouver to get a man to get this information for him, but he thought that perhaps I could get it for him. I told him I could get the information without going to Seattle. I told him that Lucas was the head man, and there were several others, and I mentioned his name as being one of them. He said, "Neither you nor the Government has anything on me," because he did not have any money in the deal himself. I do not remember of his saying that he had given or paid any money to Lucas. He said that Lucas had paid back the money to some of them, and he thought that he should have his money back, if he paid it back to others, or words to that effect. There was no amount of money mentioned.

(Testimony of John Berry.)

I do not remember whether anybody had been arrested in connection with this shipment at that time other than Platt. I know when the arrests were made. This conversation was prior to the arrest of these men here. I *should it* was about four days after the arrest of Platt before anyone else had been arrested. I *rember* nothing being said about a pipe-organ.

I told him it looked like the whole bunch were getting in bad, and he said, "As far as I am concerned, neither you nor the Government have anything on me because this money was a friend's money" that he was talking about he had given Lucas. [43]

Cross-examination.

(By Mr. WELSH.)

I was talking with Mr. Richards after the arrest of Jack Platt in Seattle. At that time, the newspaper had published the account of the liquor being seized in dry-cells. I have never talked with Oess, Mr. Symons or Mr. Toles on that subject either before or since the arrest of Platt. I had never talked with Lucas, Boomer or Platt. Richards is the only one of the defendants I ever talked with.

I had been working on the proposition for several days watching for these dry-cell batteries to come in. I did not know at that time there were other parties than the defendants implicated. In fact, there were more implicated in it than I thought there were at that time.

**Testimony of Miles McGrail, for Plaintiff.**

MILES McGRAIL, a witness called by the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

I am acquainted with the defendant Richards. I had a talk with him in the month of March last about the Joe Lucas whiskey shipment after the arrests were made, and he said he did not have a dollar of his own money in it, but the money he gave Lucas belonged to a woman. [44]

**Testimony of F. W. McIntosh, for Plaintiff.**

F. W. McINTOSH, a witness called by the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

I am a special agent for the Department of Justice of the *United*. I know the defendant Mr. Richards by sight. I had a talk with him on the 17th of March in the office of the county engineer of Lewis County at Chehalis, Washington. I recounted to him some of the things we had indicating his guilt in this matter, and advised him it would probably be the easiest way for him to handle the matter to state his part of it with entire truth and candor and let the Government take action accordingly. Mr. Richards was not inclined to talk very much, but I said to him, You gave Mr. Lucas money. You did not give it to him for nothing. He went down for whiskey,

(Testimony of F. W. McIntosh.)

therefore you must have been concerned in the whiskey shipment. Mr. Richards said he did give him money, but the money was not his. He said it was something over \$200. I made the statement to Mr. Richards that they had a nice little combination there in Centralia, apparently bringing in liquor. Mr. Richards says, "Centralia and Chehalis, too."

Cross-examination.

(By Mr. WELSH.)

At the time I talked with Richards, he knew I was in the employment of the Government. Our agent, McCormick was present during the conversation. I took him into the engineer's office that we might have a private conversation. I do not know personally of anyone else down there that had been shipping any liquor. [45]

Redirect Examination.

(By Mr. CONWAY.)

Q. You say that you went to see Mr. Oess, but he was not inclined to talk. Will you tell the jury exactly what transpired and what was said when you saw Oess?

A. I talked with him along the same line that I did to Richards and told him that if he cared to make a frank statement of the facts, we would be glad to have him do so, and he said he was not ready to talk. He wanted to consult an attorney before he decided as to just whether he would make any statement or not, and that was the extent of the conversation.

Mr. WELSH.—We move to strike out the conver-

(Testimony of P. M. Clayward.)

sation he had with Oess on the ground that it is incompetent, irrelevant, and immaterial.

The COURT.—Motion denied.

Mr. WELSH.—Exception.

**Testimony of P. M. Clayward, for Plaintiff.**

P. M. CLAYWARD, a witness called by the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

I am the clerk of the freight department and in the accounting office of the Pacific Steamship Company. Here is the original manifest of the steamer "Admiral Schley," voyage No. 59.

Witness pointed out on the manifest a shipment to Johnson Electric Company of eight cases dry-cell batteries and one trunk samples, billed at San Francisco, February 26, 1919. It was on the "Admiral Schley," voyage 59. She left [46] San Francisco the 26th of February, 1919, and in the ordinary course would reach Seattle about March 1st. I did not see that shipment.

**Testimony of Mrs. Nellie Lucas, for Plaintiff.**

Mrs. NELLIE LUCAS, a witness called by the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

I am the wife of Joe Lucas; went with him to San Francisco from Centralia in the early part of last



(Testimony of Mrs. Nellie Lucas.)

February. I know Jack Platt. I was present at a meeting in our apartments in Centralia some time near the middle of March. There was present my husband, August Oess, Bruce Richards, and J. H. Boomer. Mr. Richards said, speaking to my husband, "Well, Joe, I would not care so much about this matter, only the money does not belong to me; I borrowed it from my friends and I cannot explain to them what became of it, and I ought to have it back to give them; it is not my own money." Mr. Oess stated the reason he wanted 'his money back was because he had mortgaged his truck to some lady for \$400.00, and he expected to use the liquor to get back the money and pay his debts and straighten it all out. It was mentioned at that time that Mr. Richards had \$240.00 of other people's money, and Mr. Oess had mortgaged his truck for \$400.00, and he had to give all the money to Mr. Lucas for the liquor. Boomer's account was mentioned as \$50.00. I told Mr. Lucas that I thought he had better pay the money back, and I said they were probably the only ones that knew it now, and if he would pay the money back, they would not say anything, and they agreed they would not say anything if Mr. Lucas would give the money back. [47] He wrote out a check for the full amount to each defendant. I says, "Somebody ought to do something for Mr. Platt," and Mr. Richards agreed, since they had gotten him into the trouble, they ought to get him out of it, if they possibly could, so they agreed, and he took out of Mr. Richard's check \$40.00, Mr. Oess' check

(Testimony of Mrs. Nellie Lucas.)

\$50.00, and Mr. Boomer's \$5.00, and gave them checks, to Mr. Oess \$350.00, Mr. Richards \$200.00, and Mr. Boomer \$45.00.

I recognize Government's Exhibits 3 and 4 as the checks given to Oess and Richards.

I told the gentlemen they were a band of crooks, and I thought they all ought to be in jail with Mr. Platt. Richards said, "I would not go to jail for \$5,000.00; I would not go to jail for any amount of money, if I could keep out." I said, "There was only one way to keep from going to jail and that was to keep your mouth shut," and they agreed they would all keep still.

There was a later conversation in our apartment in Centralia. There was present Mr. Richards, Mr. Lucas, myself, and Mr. McCormick. We saw Mr. Richards come across the street and Mr. Lucas motioned to him and he came up to the apartment. As he came in, Mr. McCormick was talking to us, and he jumped behind the piano. Mr. Richards was excited and said, "They have got us all; they are going to arrest every one of us and take us to jail." Now, he says: "I will tell you what we are going to contend—we are going to contend that you were going to ship the booze in the pipe-organ and bonded liquor and we are going to contend that the booze came in at the Milwaukee Depot and we have already got our booze, and that you had already shipped it in." I said, "Yes, but if you tell that, [48] you will have to prove that you got the liquor and you will be just as guilty that way as any other. Mr. Lucas has de-

(Testimony of Mrs. Nellie Lucas.)

cided to give up and plead guilty and you had better do it, too." Richard said, "I am not guilty." I says, "You know you are guilty as he is," to which he answered, "I will tell you if I knew that I could get out of it with just a fine, I would plead guilty, but I wouldn't go to jail; I wouldn't go to jail; I wouldn't go to jail for \$5,000, or all the money in the world; I would not spend one minute in jail." I said, "Well, they will get you anyway; now that somebody has told, they will get you anyway." He replied: "That old Boomer is the man who told the whole thing; he went over there and got drunk and told everything he knew, and in Mr. Sutter's presence." I said: "Well, you better protect yourself. Mr. Lucas is going to plead guilty; somebody has told and he has decided to go and plead guilty." I said, "Well, you're guilty, you know you are guilty." He said, "Yes, but the Government does not know it." He said they would contend that it was not their liquor that had come into Seattle; that their liquor had already gone into the Milwaukee Dock.

### **Testimony of J. W. McCormick, for Plaintiff.**

J. W. McCORMICK, a witness called by the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

My name is J. W. McCormick. I was a special agent for the United States Government, in the Department of Justice, and made an investigation with respect to a shipment of liquor from San Francisco

(Testimony of J. W. McCormick.)

to Seattle that had been made by Jack Platt. [49]

First learned of the shipment through Sheriff Berry, March 7th, in the Marshal's office in Tacoma. I went to Centralia and was introduced to a man named Lucas; that is the defendant Lucas.

Q. Joe Lucas?

A. Exactly. Lucas and I talked about this matter then and he asked me if there was not some way that the thing could be fixed, and that he was in deeply and that he thought he had suffered enough, and I told him there was only one way in which the matter could be fixed and that was for him to make a clean breast of the whole thing and have everybody else connected with it to do the same thing, and I told him—

Mr. WELSH.—We object to what he told Lucas.

The COURT.—Overruled.

Mr. WELSH.—The different statements he got after going to Lucas would not bind these other defendants, they not being present, and it was after the consummation of the scheme, if there was any such scheme.

The COURT.—You will only consider what took place as affecting Lucas, but this charge being that of a conspiracy, it is possible for the jury to find one of the defendants now on trial as being guilty of a conspiracy with Lucas; that being true, anything that Lucas said even after the conspiracy, after the seizure, which I don't understand this to be—this is after the conspiracy?

Mr. WELSH.—Yes.

(Testimony of J. W. McCormick.)

The COURT.—Even after the seizure, what Lucas said became material by reason of that fact.

Mr. WELSH.—As I understand the rule, I think your Honor has [50] stated the rule in instructing the jury heretofore; after the end of the conspiracy, if there was a conspiracy, whether it was a success or not, anything said or done by any of the co-conspirators, if there was a conspiracy, is not admissible as against any of the other defendant.

The COURT.—That is true, but take a case like this: Say Lucas and John Smith were charged with having been in a conspiracy and you had John Smith in one room and Lucas in another and Lucas confessed to the conspiracy; after the transaction is over, Lucas confessed in one room and Smith in another, you might say that what Smith said did not affect Lucas and what Lucas said did not affect Smith, but the two taken together would come under another rule. The objection will be overruled.

Mr. WELSH.—We object to the question as incompetent, irrelevant and immaterial.

The COURT.—Overruled.

Mr. WELSH.—Exception. We may have an objection and exception to this line of testimony, as to anything that Lucas said.

The COURT.—The objection is overruled and exception allowed, and the jury will understand as I have stated to them in the other instances, where the statement was made after the seizure, you will consider it only as affecting Lucas, but it does take two men to make a conspiracy and if one man confesses

(Testimony of J. W. McCormick.)

he has been in a conspiracy you can consider that against him at least. Proceed.

A. Why, Lucas then asked me what we had on him, and I told him of the circumstance of going to the station and getting the information in regard to the tickets purchased, also the express receipt. He then asked me whether Platt had [51] *had* squealed or not. I forgot in my opening statement to say that before we went to Centralia I went to the County Jail here in Tacoma and interviewed Platt with Sheriff Berry and that Platt had not squealed; he refused to discuss the matter at all. His last statement to Sheriff Berry and me was to tell Joe Lucas that Jack Platt did not squeal.

Mr. WELSH.—We object to that as incompetent, hearsay.

The COURT.—That will be stricken and the jury instructed to disregard it.

A. Lucas asked me whether Platt had squealed or not and I told him he had not. He said, “Where did this information come from?” I then told him that Sheriff Berry had told me that Richards had approached Sheriff Berry, seeking to employ him as a detective to find out whether or not Lucas had double-crossed Richards. He said, “Oh, that’s how it came out?” Yes, sir. Then Lucas agreed to go to his little apartment over the Grand Theater, or Liberty, I have forgotten which, and within a very short time after that made a statement implicating these three defendants.

Mr. WELSH.—We object to that as incompetent,

(Testimony of J. W. McCormick.)

irrelevant and immaterial, hearsay.

The COURT.—I will sustain the objection.

Q. Did you talk with any of the defendants on trial?     A. Yes.

Q. Which of them did you talk with first?

A. Lucas.

Q. Of those on trial?

A. Oh, I beg your pardon. Richards.

Q. You may state who was present. [52]

A. The first conversation I had with Mr. Richards there was nobody but he and I present, opposite the Pastime Pool Hall in Centralia on the 10th or 11th of March, 1919.

Q. You may give the jury the substance of that conversation.     A. I went into the—

Mr. WELSH.—Your Honor, I am going to make an objection and then I won't have to make it any more on this line of testimony. We move to strike out all the witness has testified to as to statements made by Lucas after the seizure of the liquor,—and that is the time he has testified to—for the reason that at that time if there was any conspiracy it was at an end, and any act or conversation or statement by Lucas would not bind any of the defendants, and in fact is not admissible as against them, and Lucas not being on trial, it is not admissible at all here.

The COURT.—It will be stricken out and the jury instructed to disregard it.

I talked with defendant Richards on the 10th or 11th of March, 1919, in Centralia. I told him I wanted to discuss the liquor shipment in which he

(Testimony of J. W. McCormick.)

was interested. He admitted [53] that he had paid in two hundred and fifty or forty dollars, and he related to me his having gone to Sheriff Berry with the proposition to have Berry investigate the shipment as to whether or not Lucas had actually shipped the whiskey. Mr. Richards said he had asked Lucas for the bonded goods, and he had reason to believe that Joe Lucas had double-crossed him, and he would spend \$5,000 to see it through. He said he had gone to see John Berry and John Berry had declined and told him there was only one thing to do, and that was to look out for himself. He could not interest him in a case of that kind. I asked Richards if he had admitted giving his money to Lucas for the purpose of shipping bonded whiskey from San Francisco to Centralia, and had also stated that to John Berry, to go to the Dale Hotel in Centralia and make the same admission in the presence of myself and Agent McIntosh. He agreed to do so, but asked me if, before he went to the Dale Hotel with the purpose of making this admission, I would accompany him to Oess, and I agreed to. He introduced me to Oess, and in Mr. Richard's presence I told Mr. Oess who I was and why I was there. I told Oess that Mr. Richards had already admitted he had given \$240.00 to Lucas for this purpose; that I understood that Oess had given \$400.00, and Oess admitted that he had given \$400.00. Jack Platt's name was not mentioned. I then suggested to Oess that he better likewise make an admission and clean the matter up, and



(Testimony of J. W. McCormick.)

he said he wanted to talk to his attorney. Richards then refused to go to the Dale Hotel.

Afterwards I had a conversation with Richards in Mr. Lucas' apartment, in Centralia. When Mr. Richards came up to the apartment, I went behind the piano. Richards came [54] in and said: "Joe, the Government man is here and knows the whole darn thing; he knows who gave the money, how many of us gave the money, and so on, and, Joe, if I had known there was more than four of us in the proposition I would not have gone into it." He did not mention the four. Mrs. Lucas said, "We have decided to make a clean breast of it, and said you are as guilty as he is, as the rest of us, and you should do the same thing." Richards says: "Well, yes, but the Government doesn't know that. I have just seen George Dysart and he advised me to keep quiet and not make a statement at all to anybody. This Government man wanted me to make a statement, but George wants me to contend that the whiskey seized in Seattle was not our whiskey, and I am going to do it." I followed Mr. Richards downstairs and told him I had overheard the whole conversation, and he denied it, and he also denied it before Mr. and Mrs. Lucas. After Mr. Richards' arrest in the engineer's office in Chehalis, in the presence of Mr. McIntosh, he admitted that he had given money to Lucas for the purpose of purchasing bonded whiskey in San Francisco to ship to Centralia.

I first saw Government's Exhibits 3 and 4 in the

(Testimony of J. W. McCormick.)

Farmers and Merchants Bank at Centralia, on or about March 12, 1919.

Cross-examination.

(By Mr. WELSH.)

I first talked with Bruce Richards after the liquor had been seized. I talked with him alone. That is the time he took me down to see Mr. Oess. There was a warrant issued for his arrest at that time, but I did not have it. I went down there for the purpose of endeavoring to get some admission [55] from the defendant Richards. My object was to get him to make some statement, that if necessary I could come here on the witness-stand and testify about it, and also that I might include it in my report to my superior. He did not state to me that he bought brandy from the defendant Lucas, but that Lucas had the liquor in Centralia, and he was to deliver it that same night to his house. He didn't make such statement at the time he asked me to go down and see Oess. At Oess' place and in his presence, he said he had given Lucas \$240.00 for the purpose of purchasing whiskey bonded goods in San Francisco for delivery to him at Centralia. He made that statement in the presence of Oess.

I next saw him at Mr. and Mrs. Lucas' apartment at Grand Theater, Centralia. When I saw Richards coming, I hid, not for the purpose of decoying him into some statement, but so that if necessary I could come here and testify against him.

**Testimony of J. T. Secrist, for Plaintiff.**

J. T. SECRIST, a witness called by the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

I am deputy United States Marshal. I served a warrant on Bruce Richards. He talked something about being arrested, and asked me about a bond. He and Mr. McIntosh were doing some talking there, but I did not hear them. [56]

**Testimony of Ben H. Rhodes, for Plaintiff.**

BEN H. RHODES, a witness called by the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

I am president of the Farmers and Merchants' Bank at Centralia. Exhibits 3 and 4 have been paid. Endorsement on Exhibit 4, "Bruce Richards," is his handwriting.

**Testimony of Joe Lucas, for Plaintiff (Recalled).**

JOE LUCAS, being recalled as a witness for the Government, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

I heard Mr. McCormick's testimony about the occasion when he and Mr. Richards and myself and Mrs. Lucas were present in our apartment in Centralia. Mr. McCormick and Mr. Richards returned to the

(Testimony of Joe Lucas.)

apartment on that day. McCormick said, Didn't Richards tell you what McCormick testified to here? He said he didn't, or he says, "I wasn't up here at all." (Witness hesitated.) He says something about a trap. "You don't get me in no trap," and that was the last I heard of it.

**Testimony of Mrs. Lucas, for Plaintiff (Recalled).**

Mrs. LUCAS, being recalled, by the Government, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

Mr. McCormick and Mr. Richards returned to our apartment on the same day, and myself and husband, Mr. Richards and Mr. McCormick were in our apartment at Centralia. McCormick said, "Now, tell Mr. and Mrs. Lucas that you did not say that," [57] and he said that he did not say it, and that he had not been in the room and had not talked to us at all.

Government rests.

Whereupon Mr. Welsh, attorney for defendant Oess, moved for a nonsuit as to him for the reason,

First, because of the insufficiency of the evidence upon which to base any verdict against him, and,

Second, because there is fatal variance between the evidence and the indictment.

The COURT.—I will overrule the motion at this time.

Mr. WELSH.—And exception.

The COURT.—Exception.

(Testimony of Albert Smith.)

Mr. WELSH.—The same motion is made with respect to the defendant Richards.

The COURT.—Denied.

Mr. WELSH.—And exception.

The COURT.—Exception.

**Testimony of Albert Smith, for Defendants.**

ALBERT SMITH, a witness called by the defendants, being duly sworn, testified as follows:

Direct Examination.

(Mr. WELSH.)

I have resided in Centralia thirty years. I am bank cashier of First Guaranty Bank. I am acquainted with the defendants Richards and Oess. Their general reputation as law-abiding citizens in the community in which they live is good. They stand well in their community as loyal men. [58]

Cross-examination.

(By Mr. CONWAY.)

I have never discussed the reputation of the defendant Oess with anyone; have never heard it said in that community that he was a bootlegger; never heard that report. Never heard it said of the defendant Oess in that community that since the first of January, 1916, he was dealing in intoxicating liquors. Oess does business at my bank.

I never heard anyone discuss the reputation of Bruce Richards.

**Testimony of Dr. J. H. Dumont, for Defendants.**

Dr. J. H. DUMONT, a witness called by the defendants, being duly sworn, testified as follows:

## Direct Examination.

(By Mr. WELSH.)

I live in Centralia. Am a physician and surgeon. Have known Richards 25 years and Oess ten or fifteen years. Their general reputation in their community as law abiding citizens is good.

## Cross-examination.

(By Mr. CONWAY.)

I cannot say any particular person I ever heard discuss their reputation, but that is their general reputation. I am friendly with all of the defendants. Never heard of Oess dealing in intoxicating liquors in Centralia since the first of January, 1916. [59]

**Testimony of T. H. McCleary, for Defendants.**

T. H. McCLEARY, a witness called by the defendants, being duly sworn, testified as follows:

## Direct Examination.

(By Mr. WELSH.)

I have resided in Centralia, Washington, 29 years. Have been postmaster for four years. Am acquainted with the defendants Oess and Richards. Their reputation as law-abiding citizens in the community in which they live is good.

(Testimony of T. H. McCleary.)

Cross-examination.

(By Mr. CONWAY.)

I never heard anything against Mr. Oess. Never heard anything in connection with liquor only since the indictment quite a few jokes have passed about the dry-cells. Never heard the character of Mr. Richards discuss with respect to intoxicating liquors. Never heard their character or reputation mentioned. Their reputation has been good prior to these accusations. My conclusion that their reputation is good is based on the fact that I never heard anything against them.

Q. Did you ever hear anything in connection with them or either of them with respect to the handling of intoxicating liquor?

Mr. WELSH.—We object to that as incompetent, irrelevant and immaterial.

The COURT.—You are confining this before the offense. Objection overruled.

Mr. WELSH.—Exception.

A. No, sir. I never heard that Oess dealt in intoxicating liquors after prohibition went into effect.

[60]

### **Testimony of Theodore Hoss, for Defendants.**

THEODORE HOSS, a witness called by the defendants, being duly sworn, testified as follows:

Direct Examination.

(By Mr. WELSH.)

Have lived in Centralia 35 years. Am in the cattle business, real estate and telephone business. Am ac-

(Testimony of Theodore Hoss.)

quainted with defendants Oess and Richards. Their general reputation in the community in which they live as law-abiding citizens is good.

Cross-examination.

(By Mr. CONWAY.)

I have *discuss* the question with a good many people in my lifetime in Centralia. Could name fifty of them with whom I have discussed their standing in the community. Have discussed the reputation of the defendants with respect to intoxicating liquors. Mr. Oess was in the saloon business before the State went prohibition. His reputation as a saloon man was extra good. He bore an extra good reputation, Have never heard anything about him in connection with intoxicating liquors since the State went dry.

I am familiar with Mr. Richards' reputation as to intoxicating liquors. I don't think he ever took a drink since I knew him. That is his reputation, any-way.

### **Testimony of Dr. Thomas Primrose, for Defendants.**

Dr. THOMAS PRIMROSE, a witness called by defendants, being duly sworn, testified as follows:

Direct Examination.

(By Mr. WELSH.)

Resided in Centralia 18 years. Am a physician. Know Richards and Oess. Their general reputation as law-abiding [61] citizens, as far as I know, is good. Have never heard anything against any of them, nor their character assailed in any way.



(Testimony of Dr. Thomas Primrose.)

Cross-examination.

(By Mr. CONWAY.)

Have never heard their character as law-abiding citizens discussed. Am friendly with all the defendants.

**Testimony of August Oess, for Defendants.**

AUGUST OESS, one of the defendants, being duly sworn, testified as follows:

Direct Examination.

(By Mr. WELSH.)

Live in Centralia. Am acquainted with Joe Lucas. Am married man. Lucas told me that he was going to California to buy a pipe-organ, about the time I gave him the money in January, 1919. Jerry Driscol was present when I gave him the money in the lobby of the Liberty Theater. A few days before that he came to my place of business and wanted to know if I would let him have some money to buy a pipe-organ in California, for placing in the Liberty Theater. I told him I didn't have the money but I would see what I could do. In the next two or three days I met him and Mr. Driscol near the theater and I paid him \$400 in the presence of Mr. Driscol, for a pipe-organ, not for any whiskey. He said he would get the organ and pay me as soon as he got back. He gave me a receipt, "I. O. U. \$400," signed by Joe Lucas. He wrote that in the presence of Driscol. He paid me back \$350, and he said he was not in a position to pay the balance back, but would pay it later. After he got back, I met him at the theater,

(Testimony of August Oess.)

[62] and he said, "There is nothing doing, I didn't buy any organ. I brought your money back to you. I had no business to spend your money for anything else. Your money is here for you. You can get it back in the morning." Mr. Richards was present at the time. Mrs. Lucas was not. He finally paid me \$350, as shown by Exhibit 3. At the time he gave me the check, Mr. Boomer, Mr. and Mrs. Lucas and Mr. Richards were present. Then is where I learned of his trouble. He had paid these other men, and said he had two other men to take care of, his step-father and another man, Platt, that I did not know anything about. He made the same statement to Richards. Said he would pay me the balance later. I never had any conversation with him prior to the time he went to California about February 7, 1919, that he was going to California to purchase liquor and ship the same into the State of Washington. He never told me he was going to California to bring whiskey back in the pipes of the pipe-organ, or that he was going to bring any liquor back in any way. I just loaned him the \$400 because he was a friend of mine. I have let him have money before, and he paid it back. We were friends.

I heard McCormick testify at the time he said that Mr. Richards and he went down to my place of business. We had a talk there. McCormick talked a very little; gave me his card and said, "I think the best thing for you is to admit the corn; it would be a whole lot easier on you." Of course I realized I was in a mix-up. I told him no more than that I

(Testimony of August Oess.)

had given Lucas the money. I did not tell him whether it was a loan or anything. Richards said he was giving Lucas some money for whiskey. Where he was to get it, I could not [63] say. I don't know. I could not say that any statement about California was made. He did not say that the whiskey was to be shipped from California. I did not say that I had a mortgage on my truck or auto, because I did not have.

I never had any conversation with Mr. Lucas where I agreed that I would transport the whiskey from Seattle or elsewhere in my truck to Centralia. Such a thing was never discussed. I did not know before Mr. Lucas went to California that he intended to ship any intoxicating liquor into the State of Washington. He was going to buy a pipe-organ. That is all I heard of it.

Cross-examination.

(By Mr. CONWAY.)

Joe Lucas in January and February of this year was doing a good business. He didn't seem to have money and he needed money to buy an organ. He has four theaters in Centralia. His credit was good everywhere. I heard Richards tell McCormick that he had given Lucas the money for whiskey. The amount was not mentioned. I did not know that the whiskey was to have been brought from California or San Francisco. I heard no mention of either California or San Francisco. I was standing right there listening. I was not concerned with Richard's trouble. I did not pay much attention to what Rich-

(Testimony of August Oess.)

ards had to say about the matter. I was surprised when Richards came down and brought the officer down. I understood that Richards came along just to show McCormick where I was. I wanted to tell McCormick that I had loaned the money to Joe Lucas, but he didn't give me any chance to. He said, "You boys may as well admit the corn"; that is all he said. I certainly did deny the corn. I denied that I was in the [64] whiskey proposition. Afterward at Chehalis in Westover's court, he asked me if I wanted to make a statement. I told him I did not think I wanted to now, as I had made other arrangements. I could not give Richards' exact language. He told me, just talking about this liquor that he was to get from Mr. Lucas. I don't know anything about California being mentioned at all. Richards said, "I gave Lucas \$200," or 240, I forgot which, and he was to bring him back some brandy. "I don't feel I am guilty because he never brought me what he agreed to, but instead of bringing me brandy he got me mixed up into some other deal."

I don't remember anything having been said up at Lucas' room when Richards, Boomer and I were present about Jack Platt being in trouble, nor what Lucas said. The \$50 he kept out of my \$400 was not to pay Jack Platt. Nothing was said about that. Mrs. Lucas was there. I didn't hear any conversation about Richards being paid short. All Lucas said was, "Here's your money, boys; I cannot give you what is coming to you." I don't know anything about two sets of checks. Nothing was said about

(Testimony of August Oess.)

any such checks. Lucas said he didn't have money enough, and he kept this extra \$50. He wanted to give Mr. Richards some, and he didn't have quite enough, and said he would give me the balance later on. Mrs. Lucas said, "You go ahead and give the boys a check." I told Mrs. Lucas she did not know the conditions of my making the loan. She said, "I know everything from start to finish," and I said, "Why, she didn't know only what Joe himself must have told her." He could not put me in that, because my money was only a loan.

I never told Lucas that I would tell the rest of the gang that I didn't get mine. I destroyed the receipt I got [65] from Lucas after he paid me the \$350 back. He still owes me \$50. I had the \$350 four or five days, in fact, a week before the Federal officers came down. Lucas didn't tell me about Platt's arrest before he gave me the \$350 check. He claimed that his stepfather in California was in trouble. He didn't say that it was anything connected with whiskey, and I did not suspect it was. McCormick was down to see me a week after I got the check; after I had destroyed the I. O. U.

I did not ask Jerry Driscoll to testify that I had only paid Lucas \$350 in the first place. The first I heard of Jack Platt was after McCormick was down there and gone. Mr. Richards told me about Platt; about Lucas having a man up here in jail, or something like that. That was after I had destroyed the I. O. U.

I heard Boomer's testimony. To my knowledge,

(Testimony of August Oess.)

it is false. I don't know anything like that being said or being done. My money was in there for that loan, and he told me he would take \$50 out of that. Joe Lucas has always been my friend, as far as I know. I know he was acquainted with Bruce Richards.

Q. Now, I want you to explain to this jury why it is, or if you can explain why Joe Lucas should concoct the story that he has on you and Bruce Richards.

Mr. WELSH.—We object to that as not a fair question.

The COURT.—Overruled.

Mr. WELSH.—Exception.

A. Not any more than to protect himself, I guess, that is the only thing I can say, the only thing I can give any reason for; I never can give any reason for it in the world,—because what I told you is true just the same. [66]

Q. You think Joe is protecting himself?

A. I don't know, but that is the only answer that I could give; I do not know *why want* to get out of from it that way. I guess he did not have much chance to protect himself.

Q. What?

A. He did not have much chance to protect himself; he has already got his, I guess.

Mr. WELSH.—I move to strike out the answer, because the witness, the record of this Court shows that the indictment against him has been dismissed.

The COURT.—Motion denied.

Mr. WELSH.—Exception.

(Testimony of August Oess.)

I have known Boomer for a couple of years. As far as I know, have been friendly. Never had much to do with him. Know him, that is all.

Q. Can you explain why he is testifying as he did to-day against you? A. No, I don't.

Mr. WELSH.—We object to that question.

The COURT.—Overruled.

Mr. WELSH.—Exception.

Q. You cannot offer any explanation about that?

A. No, sir.

Q. Can you explain why Mrs. Lucas has testified as she has against you?

Mr. WELSH.—We object to that for the same reason, incompetent, irrelevant and immaterial.

The COURT.—Overruled.

Mr. WELSH.—Exception.

A. No. [67]

### **Testimony of Bruce Richards, for Defendants.**

BRUCE RICHARDS, one of the defendants, being duly sworn, testified as follows:

Direct Examination.

(By Mr. WELSH.)

I have lived in the State of Washington 26 or 28 years; in Centralia 22 years. Am engaged in the real estate business and handle cattle. I have been acquainted with Mr. Lucas six or seven years. I heard him testify. I had a conversation with him about whiskey the 5th or 6th of February of this year. I was standing in front of my store when Lucas came along. He was intoxicated. He

(Testimony of Bruce Richards.)

said, "Bruce, I have got 50 gallons. You can have all you want." I saw him the next day. I bought six cases of brandy of him. I wanted 3 Star Hennessey, and he didn't know just how much he had of that. He said he would let me have it at \$40 a case. So I gave him \$240 in cash. He *was bring* it down to me that night to my home in Centralia. He said he had it in Centralia. He never delivered the brandy or any part of it. I didn't know he was going to California to bring back liquor for me, and I never gave him any money for that. At the time, he was drinking pretty hard; I think for a couple weeks or three before that date. I next saw him two or three weeks after that. Three or four days after this conversation, I went to the theatre and inquired for him. After I made that inquiry I learned through Mr. Oess that he had gone to California to get a pipe-organ. I don't know just when he returned. When I first saw him after he returned, I asked him why he didn't bring my brandy, and he said, "I didn't have it." I told him I wanted my money, then he tells me he was in trouble, and at that time he went to the bank, I believe, and sent \$500 to his stepdad. That didn't [68] sound good to me, and I thought I would see whether he was telling the truth or not, and I saw Sheriff Berry, and I had a paper stating some of the trouble that had happened. I asked the sheriff if he could give me the names of some shippers and receivers who would know about it. He said he could tell me all about it and told me considerable, and that Platt was the man that was ar-



(Testimony of Bruce Richards.)

rested. I told the sheriff that I was getting double-crossed, because I thought Lucas was drinking and blowing in my money. I didn't tell Berry that I had given Lucas money to bring whiskey or liquor from California. I told him I gave him money, and told other people I gave him \$240. People would ask me how I came to get into the trouble about the dry-cells, and if they were friends, I would joke with them and tell them just how it was. I told Mr. McCormick I paid the \$240 for brandy, and that it was to be delivered the night I gave the money.

When I took McCormick down to Oess' place of business he told me there was going to be a warrant for me over the Lucas scrap that you fellows were in, and I said, "What are we in on?" and he said, "There is one for a man named August Oess," and I told him, "I will go up with you." I went with him, and on the way, I told him if I had committed any crime, that was all the crime I had committed, that I gave \$240 to bring me down some brandy that night, but he didn't do it, and I got my money all back but \$40, and I expected to get that. I took him to the Oess place of business, and introduced him. I paid no attention to the talk. He asked me to go to the Dale Hotel with him. I didn't hesitate any. I was perfectly willing to go before these two men and make the same statement [69] I always made, and I never intended having an attorney until after I was arrested, and never did. I didn't talk to any attorney until after I was arrested. In Oess' presence, I told McCormick that I had given Lucas the \$240 to

(Testimony of Bruce Richards.)

bring this brandy down to me that night. That is the only condition I gave the money to, and the only talk I had with him with reference to the whiskey. McCormick interviewed me three times. I never refused to talk to him.

I remember going up to Lucas' apartment when McCormick was there. Lucas beckoned me to come up. Lucas said to me, "Don't you think we ought to all go and plead guilty, and take a little fine, and get out and get this thing over with?" I said, "What do you mean, Joe?" He said, "That would be the easiest way anyway to get out of it if we can." I said, "I would not think about such a thing." Then I heard someone talking to Mrs. Lucas upstairs just outside the door, and I said, "That's McCormick." "No," Lucas said, "That is some fellow demonstrating a flying-machine, trying to sell shares," and I said, "Nothing doing; I would never plead guilty to something I wasn't in on." I went downstairs and got no more than five steps from the door until this man McCormick comes running after me and said, "Now, I am going to give you a chance to make a statement to save yourself." I said, "What do you mean?" He said, "Were you upstairs and told Lucas you would offer to plead guilty?" I said, "I didn't make any such statement." He said, "Will you walk up and see them?" We went upstairs. He opened the door, called Lucas, and he came up the stairs. McCormick stood between me and the door and said, "Didn't Richards say [70] so and so?" Lucas said, "Yes." I

(Testimony of Bruce Richards.)

made some remarks. I don't know what. I was angry. I said, "McCormick, you are just as dirty as he is." I went downstairs. It seems as if McCormick was trying to put words into my mouth. I never told McCormick that I had furnished money to Lucas to go to California and bring back any liquor. I had no conversation with Oess and Lucas in regard to the method in which the whiskey was to be brought to Centralia. I was never discussed. I never met Oess in Lucas' presence before he went to California. I never discussed it with him nor with Tole. Never met Tole with Lucas.

Cross-examination.

(By Mr. CONWAY.)

I did not want whiskey, but if I could not get brandy, I would take whiskey. I was not familiar with the bootlegging prices of Hennessey brandy in Centralia at this time. Joe Lucas' credit was good in Centralia. I considered all the time if I didn't get my whiskey or brandy, I would get my money. I thought he was double-crossing me because of the story he put up after he came back. He was to put in whiskey if he did not have enough for six cases. I was paying the same price for brandy as for whiskey. The price was to be \$40 per case of twelve.

I could not tell the first or last time that I told anybody about having bought brandy from Lucas. I told McCormick and McIntosh. I don't know whether I told anything about the brandy on the occasion when Boomer, Lucas and Oess were in Lucas' apartments. I was there with Lucas. Oess,

(Testimony of Bruce Richards.)

Boomer, Lucas and myself were in Lucas apartments. Mrs. Lucas was there. I don't know whether the brandy transaction was mentioned when I was at Lucas' apartments and saw [71] McCormick. I don't know as I mentioned to Marshal McGrail about the brandy. If I talked with him at all, I did. I don't know whether I mentioned the brandy transaction to any of the witnesses who testified in this case. I did to McCormick, the Federal man, and to Oess. I never told Miles McGrail that neither the Government nor anybody had anything on me, because I had no individual interest in the transaction and the money I had given Lucas was not my own. I gave him \$240 at one time. I never mentioned anything about a woman being interested in the transaction. I never told McGrail or McCormick or McIntosh or any other person that I paid the money for a woman. I may have said in the conversation at which Berry, McIntosh or McCormick was present, in which somebody asked me about the man for whom I was getting the liquor, that I didn't say it was a man. I might have said it in a joking way. I never said in the presence of Lucas on the occasion when Boomer and Oess were there, that we were going to contend that the liquor that we bought was delivered at the Milwaukee depot in Centralia. I never said in Lucas' apartment that I would run away if I thought I would have to go to jail; that I would not be convicted of this offense, or any offense in connection with the matter and go to jail, for \$5,000. I may have said I was pretty near 60 years

(Testimony of Bruce Richards.)

old, and I never had had a key turned on me in my life and I never expected to. I never had bought any Hennessey brandy before this time when I bought it from Lucas since the State went dry. Lucas said he had the liquor in Centralia. I expected Sheriff Berry to find out whether Lucas' story was true or not. I was not worried about getting my money back. I did not expect Berry to help get my money [72] back or get the whiskey. I didn't believe Lucas' story. If he had been out of money and in trouble, I would have helped him if I could have believed his story, but I could not believe that; after seeing the paper, I was going to see McMaster, a detective of Portland and have him look up the matter, and find out whether he had sent this \$500 to his stepdad. I didn't believe his story at the time he was telling it.

I have lived in the State thirty-odd years, and in Centralia since '97. Before that I was running section about three and a half years. During all the time I have been living in Washington I have been in the stock business, cattle business, quite a little, and I was chief of police during Mayor Galvin's administration. I like good horseraces and have played the horses a good deal. I have bought and sold property for about 10 or 12 years, and expect I have owned 10 or 12 hundred lots in Centralia and bought back and forth and built houses there and bought and sold them.

The reason I did not make a written statement to McCormick was that he did not find his man at the

(Testimony of Bruce Richards.)

hotel. I would have made the same statement I have made to-day or yesterday in writing. I never refused to make that kind of a statement in writing.

Redirect Examination.

(By Mr. WELSH.)

Mr. Lucas never told me at any time that Oess had contributed any money to him for the purpose of going to California and getting whiskey. I never talked to Mr. [73] Boomer about it. I never told Boomer that I had contributed money to Lucas to bring in liquor from California.

I never met Lucas and Oess at any time before Lucas went to California. [74]

Defendants rest.

**Testimony of H. K. O'Neill, for Plaintiff (In Rebuttal).**

H. K. O'NEILL, a witness called by the Government in rebuttal, being sworn, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

Lived in Tacoma a great many years. Prior to the first day of January, 1916, I was connected with the liquor business.

Q. Can you now testify as to what the price was on 3 Star Hennessey, by wholesale, per case, at that time?

Mr. WELSH.—I object to that as immaterial, improper rebuttal, irrelevant, because no matter what

(Testimony of H. K. O'Neill.)

the price was, it was not for sale on the market, had no marked price.

The COURT.—He is asking about prior to January, 1916. Objection overruled, but the jury will not only take into account the circumstances and what the market value was on this particular liquor at that time, but the various explanations given, that it was a conversation concerning 3 Star Hennessey. You may answer the question.

Mr. WELSH.—Exception.

A. Eighteen dollars a case.

Q. What was the price of bonded one-hundred proof whiskey at that time?

Mr. WELSH.—We object to that as immaterial.

The COURT.—Overruled.

Mr. WELSH.—Exception.

A. Well, it was all different prices according to the grade of the liquor. Sunnybrook was \$8.00 or \$9.00 a case of 12 quarts. Old Taylor was about \$9.00. Old Crow \$11.50. [75] Ordinary bonded whiskey was around these prices. 3 Star Hennessey Brandy is imported.

Thereupon, it was stipulated between the Government and the defendants that on May 12, 1919, on motion of F. R. Conway, Assistant United States District Attorney, in open court, a dismissal of this case was made as to J. H. Boomer and Joe Lucas.

**Testimony of Joe Lucas, for Plaintiff (Recalled in Rebuttal).**

JOE LUCAS, being recalled in rebuttal by the Government, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

It is not true that I was drunk one day and walked along the street and said to Richards, "Bruce, I have got 50 cases," as testified to by Richards. I didn't tell him at any time that I had 50 gallons of anything. I never agreed to deliver any brandy or any intoxicating liquors to Bruce Richards, anyway. Nothing was said between Richards and me the time he gave me the money for the 3 Star Hennessey, or any other time. I never told Richards at any time that I had any brandy. I had not been drinking when I made the statement to McCormick as to who was in the deal. I never gave August Oess an I. O. U. for the \$400.00, or any written receipt of any kind. I don't know whether I told Oess the price of the organ I was going to get in California. I told him I was going to buy a pipe-organ; did not say anything about its being used, or as a special bargain or about mortgaging that organ, or getting money on it after I had brought it to Centralia; nor did I say anything about needing the money in order to consummate a [76] trade for the organ. I didn't ask Oess to loan me any money.



**Testimony of Mr. McGrail, for Plaintiff (In Rebuttal).**

Mr. McGRAIL, being called in rebuttal, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

Bruce Richards did not tell me in any conversation that he had ordered brandy from Joe Lucas and that it was to be delivered at his house, or that he had bought brandy or ordered brandy from Joe Lucas.

**Testimony of Mr. McIntosh, for Plaintiff (Recalled in Rebuttal).**

Mr. McINTOSH, being recalled in rebuttal for the Government, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

Q. Did the defendant Richards at any time say to you or in your presence that he had ordered or bought from Joe Lucas brandy?

Mr. WELSH.—We object to that as improper rebuttal, and for the further reason that Mr. Richards never said he made the statement to Mr. McIntosh.

The COURT.—I am not clear; objection overruled.

Mr. WELSH.—Exception.

**Testimony of John Berry, for Plaintiff (Recalled in Rebuttal).**

JOHN BERRY, being recalled in rebuttal by the Government, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

Q. Did Bruce Richards at any conversation had with you in [77] February or March of this year say that he had bought brandy from Joe Lucas?

Mr. WELSH.—We object to that as improper rebuttal, incompetent, irrelevant and immaterial.

The COURT.—Overruled.

Mr. WELSH.—Exception.

A. No, sir, he did not.

Q. Did he at any time tell you about Joe Lucas having agreed to deliver him brandy?

Mr. WELSH.—Same objection.

The COURT.—Overruled.

Mr. WELSH.—Exception.

A. No, sir, he did not.

Q. Did he when he came to you exhibiting the newspaper seek to enlist your services in getting back the \$240.00 from Lucas?

Mr. WELSH.—We object to that as improper rebuttal. He went all through that in the examination in chief.

The COURT.—Overruled.

Mr. WELSH.—Note an exception.

A. No, sir, that was not, as I understood, his purpose. Richards did not say anything to me at any

(Testimony of John Berry.)

time about wanting to find out whether Lucas had sent the \$500.00 to somebody in California. That subject was never mentioned by him in this action, or transaction. You might say I have taken considerable interest in this matter on behalf of the Government. [78]

**Testimony of Mr. Boomer, for Plaintiff (Recalled in Rebuttal).**

Mr. BOOMER, being recalled in rebuttal by the Government, testified as follows:

Direct Examination.

(By Mr. CONWAY:)

At the time I was with Oess and Richards and Mr. and Mrs. Lucas, in Lucas' apartment, in Centralia, Oess did not say that he had loaned Lucas \$400.00, and that he had no concern with the whiskey business, in my presence.

Q. Did Richards say, on that occasion, that he had bought brandy from Lucas?

Mr. WELSH.—We object to that as improper rebuttal.

The COURT.—Overruled.

Mr. WELSH.—Excepted.

A. No, sir. He did not say that the stuff he bought was to have been delivered by Lucas on the same day that he bought it. He did not say that he had nothing to do with the California liquor shipment.

Q. Did Richards come to your place of business?

A. Yes, sir.

Q. Did he say at that time and place that he

(Testimony of Mr. Boomer.)

thought Lucas was double-crossing him?

Mr. WELSH.—We object to that as improper rebuttal.

The COURT.—Overruled.

Mr. WELSH.—Exception.

A. He did.

Q. Did he say at that time anything about having bought brandy from Lucas?

Mr. WELSH.—We object to that as repetition.

The COURT.—Overruled.

Mr. WELSH.—Exception. [79]

A. No, sir; he did not. He did not say anything about Lucas having agreed to deliver brandy the same day on which the payment was made by Richards to Lucas; nor anything about where the delivery of that brandy or any other liquor was to be made.

**Testimony of Mr. McCormick, for Plaintiff  
(Recalled in Rebuttal).**

Mr. McCORMICK, being recalled by the Government in rebuttal, testified as follows:

Direct Examination.

(By Mr. CONWAY.)

Q. Did Richards tell you at any time that he had bought brandy from Joe Lucas?

Mr. WELSH.—Objected to as improper rebuttal.

The COURT.—Objection overruled.

Mr. WELSH.—Exception noted.

A. The word “brandy” was never used by either Richards or myself in any of our conversations. I

(Testimony of J. W. McCormick.)

first heard the word “brandy” mentioned in this connection, at this trial.

Q. Did Richards tell you that Lucas had agreed to make a delivery to Richards, or Richards’ place of residence, of any intoxicating liquors on the same day or the next day after payment thereof was made by Richards to Lucas?

Mr. WELSH.—We object to that as improper rebuttal.

The COURT.—Overruled.

Mr. WELSH.—Exception noted.

A. He did not. At the time Richards and I went to Oess’ place of business, in Centralia, Oess and Richards talked privately and out of my hearing. Oess did not state on that occasion that the money he had paid Lucas was a loan. [80]

Government rested.

Case closed.

Mr. Welsh, attorney for the defendant, then moved the Court to instruct the jury to find the defendant Oess “not guilty,” for the following reasons:

First. Because the evidence is insufficient upon which to base a verdict of guilty against said defendant.

Second. Because there is a material and fatal variance between the indictment and the proof—

—which motion was denied by the Court, and exception allowed.

The same motion was then made by Mr. Welsh, attorney for the defendant, on behalf of the defend-

ant Bruce Richards, which was by the Court denied, and exception allowed.

Whereupon arguments were made to the jury upon behalf of the plaintiff and the defendants.

Whereupon the jury was duly instructed by the Court and retired to consider of their verdict, and later returned into court with the verdict finding the defendants Bruce Richards and August Oess guilty as charged.

United States of America,  
Western District of Washington,  
Southern Division.

I, E. E. Cushman, the undersigned Judge of the District Court of the United States, Ninth Judicial Circuit, Western District of Washington, Southern Division, before whom the above-entitled cause was tried, do hereby [81] certify that the matters and proceedings set forth in the foregoing bill of exceptions and statement of facts are all of the matters and proceedings which occurred on the trial of said cause, and the same are hereby made a part of the record therein.

I further certify that said bill of exceptions and statement of facts contains all the material facts and evidence introduced on the trial of said cause by and on behalf of the respective parties thereto, together with a statement of all motions, objections and rulings thereon, and exceptions taken thereto by the respective parties occurring in the trial of said cause, and the same are hereby made a part of the record in said cause, and that the exhibits introduced by the respective parties upon said trial will be filed here-

with and the clerk of this court is directed so to do.

Counsel for the respective parties hereto being present and concurring herein.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of July, A. D. 1919, at Tacoma, in said District.

EDWARD E. CUSHMAN,  
Judge. [82]

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### **Petition for Writ of Error.**

Bruce Richards and August Oess, defendants in the above-entitled cause, feeling themselves aggrieved by the judgment entered herein on the 9th day of June, 1919, each separately come now and petition this Court for an order allowing each of them to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the 9th Circuit under and according to the laws of the United States in that behalf made and provided, there to correct certain errors committed to the prejudice of each of said defendants, and which more in detail appear from the assignments of error filed with this petition; defendants each pray that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals for the 9th Circuit, for the correction of the error so complained of, and that the transcript of the record, proceedings and papers in this cause duly

authenticated may be sent to said United States Circuit Court of Appeals.

GEORGE DYSART,

CHARLES O. BATES,

CHARLES T. PETERSON,

Attorneys for Defendants Oess and Richards.

[83]

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### **Assignment of Errors.**

Come now Bruce Richards and August Oess, defendants, and each separately assign errors in the trial, decisions, rulings, orders and judgment of the Honorable District Court in said cause, as follows:

#### **I.**

The Honorable District Court erred in denying defendants' motion to strike out the evidence of the witness Joe Lucas in regard to a conversation between witness and Richards as to Richards pleading guilty to the charge. (Bill of Exceptions, page 6.)

#### **II.**

The Honorable District Court erred in refusing to sustain the objection to the following question put to the witness Joe Lucas:

Q. "Did you explain to Oess, Richards and Toles, that when you shipped the whiskey up in the pipes of the pipe-organ you were going to put the name of the consignee and the contents on the pipes?"

for the reason that said question was leading and suggestive. (Bill of Exceptions, page 9.)

#### **III.**

The Honorable District Court erred in overruling



the objection of these defendants with the following question propounded to the witness Jack Platt:

Q. "Had you done anything preparatory to your trip to San Francisco?"

as the same is incompetent. (Bill of Exceptions, page 9.) [84]

IV.

The Honorable District Court erred in refusing to strike the answer made by the witness to said question, as the same was not responsive. (Bill of Exceptions, page 10.)

V.

The Honorable District Court erred in overruling defendants' objections to the following questions:

Q. "Did you make any preparation in Centralia for the trip?"      A. "Yes."

Q. "What did you do?"

as the same was incompetent, irrelevant and immaterial. (Bill of Exceptions, page 10.)

VI.

The Honorable District Court erred in overruling the objection of defendants to the following question propounded to the witness Jack Platt:

Q. "What did you fill those little bottles with?"

for the reason that the same was incompetent and hearsay, as far as defendants are concerned. (Bill of Exceptions, page 11.)

VII.

The Honorable District Court erred in admitting in evidence, over the objections of these defendants, Exhibits 5 and 6, for the reason that they were not

identified. (Bill of Exceptions, page 11.)

#### VIII.

The Honorable District Court erred in refusing to strike out on motion of these defendants the testimony of the witness J. H. Boomer as to conversation between him and the defendants Oess and Richards after the liquors in this case had been seized, and as to the conversation witness had with Joe Lucas, not in the presence of these defendants. (Bill of Exceptions, pages 12 and 13.) [85]

#### IX.

The Honorable District Court erred in refusing to sustain the objection of the defendants to the following question propounded to witness J. H. Boomer:

Q. "Did Lucas at that time say anything about what he was going to do in connection with the possible criminal prosecution?"

as immaterial, hearsay, incompetent and irrelevant. (Bill of Exception, page 14.)

#### X.

The Honorable District Court erred in refusing to strike out the evidence of the witness F. W. McIntosh as to the conversation he had with the defendant Oess, as follows:

"I told Oess that if he cared to make a frank statement of the facts, we would be glad to have him do so, and he said he was not ready to talk. He wanted to consult an attorney before he decided as to just whether he would make any statement or not, and that was the extent of the conversation."

as incompetent, irrelevant and immaterial. (Bill of Exceptions, page 21.)

XI.

The Honorable District Court erred in overruling the objection of these defendants to the evidence of the witness McCormick, conversation taken place between him and Lucas not in the presence of these defendants. (Bill of Exceptions, pages 25 and 26.)

XII.

The Honorable District Court erred in denying the motion of the defendant Oess for a nonsuit as to him after the Government had rested: [86]

First, because of the insufficiency of the evidence upon which to base any verdict against him; and

Second, because there is a fatal variance between the evidence and the indictment. (Bill of Exceptions, page 31.)

XIII.

The Honorable District Court erred in denying a like motion for the defendant Richards.

XIV.

The Honorable District Court erred in overruling the objection of these defendants to the following question propounded to witness T. H. McCleary, on his cross-examination:

Q. "Did you ever hear anything in connection with Oess or Richards with respect to the handling of intoxicating liquor?"

as incompetent, irrelevant and immaterial. (Bill of Exceptions, page 33.)

XV.

The Honorable District Court erred in overruling

the objection of these defendants to the following question asked the defendant Oess, on his cross-examination:

Q. "Now, I want you to explain to this jury why it is, or if you can't explain, why Joe Lucas should concoct the story that he has on you and Bruce Richards."

as not a fair question. (Bill of Exceptions, page 39.)

#### XVI.

The Honorable District Court erred in refusing to strike out of the cross-examination of the defendant, Oess, in which he said Joe Lucas did not have much chance to protect himself; that he had gotten his already; for the reason that the record of this Court shows that the indictment against Joe Lucas had been dismissed. (Bill of Exceptions, page 40.) [87]

#### XVII.

The Honorable District Court erred in refusing to sustain the objection of these defendants to questions propounded the defendant Oess as to why Joe Lucas and Mrs. Joe Lucas had testified against him in this case, as incompetent, irrelevant and immaterial. (Bill of Exceptions, page 40.)

#### XVIII.

The Honorable District Court erred in allowing the defendant H. K. O'Neill to testify in rebuttal as to the price of 3 Star Hennessey Brandy, and as to the price of bonded one hundred proof whiskey, as immaterial, irrelevant and improper rebuttal. (Bill of Exceptions, page 48.)

XIX.

The Honorable District Court erred in refusing to sustain the objection to the following question asked the defendant McIntosh by the Government in rebuttal:

Q. "Did the defendant Richards, at any time, say to you or in your presence that had ordered or bought, from Joe Lucas, brandy?"

for the reason that the same is improper rebuttal, and that the defendant Richards never said he made the statement to Mr. McIntosh. (Bill of Exceptions, page 50.)

XX.

The Honorable District Court erred in refusing to sustain the objection to the following question asked the witness John Berry by the Government in rebuttal:

Q. "Did Bruce Richards, at any conversation had with you in February or March of this year, say that he had bought brandy from Joe Lucas?"

as improper rebuttal, incompetent, irrelevant, and immaterial. (Bill of Exceptions, pages 50 and 51.)

[88]

XXI.

The Honorable District Court erred in refusing to sustain the objection to the following question asked the witness John Berry by the Government on rebuttal:

Q. "Did Richards at any time tell you about Joe Lucas having agreed to deliver him brandy?"

as improper rebuttal, incompetent, irrelevant and immaterial. (Bill of Exception, page 51.)

### XXII.

The Honorable District Court erred in refusing to sustain the objection of these defendants to the following question asked the witness Berry by the Government on rebuttal:

Q. "Did Richards, when he came to you exhibiting the newspaper, seek to enlist your services in getting back the \$240.00 from Lucas?" as improper rebuttal and as having gone through with in witness' examination in chief. (Bill of Exceptions, page 52.)

### XXIII.

The Honorable District Court erred in refusing to sustain the objection of these defendants to the testimony offered by the Government's witness, Mr. McCormick, on rebuttal, as to what Richards told witness, if anything, about buying brandy from Joe Lucas, or about Lucas making delivery of intoxicating liquors on the same day or the next day after payment thereof to him at his place of residence, as improper rebuttal. (Bill of Exceptions, page 53.)

### XXIV.

The Honorable District Court erred in denying the motion of the attorney for the defendant Oess to instruct the jury to find said defendant not guilty, for the following reasons. [89]

First, because the evidence is insufficient upon which to base a verdict of guilty against said defendant.

Second, because there is material and fatal vari-

ance between the indictment and the proof.

XXV.

The Honorable District Court erred in denying the same motion for the same reasons on behalf of the defendant Bruce Richards. (Bill of Exceptions, page 54).

XXVI.

The Honorable District Court erred in denying these defendants' motion for new trial and erred in holding that there was no variance between the allegations of the indictment and the proof.

GEORGE DYSART,

CHARLES O. BATES,

CHARLES T. PETERSON,

Attorneys for Defendants Richards and Oess.

Dated this 26th day of July, A. D. 1919. [90]

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**Order Allowing Writ of Error.**

On this 28th day of July, A. D. 1919, comes the defendants, Richards and Oess, by their attorneys, and files herein and presents to this Court their petition praying for the allowance of a writ of error on assignments of error intended to be urged by them, and praying also that a transcript of record and proceedings, upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit. That such other and further proceedings be had that may be proper in the premises, and it appearing to the Court that heretofore and on the 9th day of June, 1919, by an order of this Court duly entered, the

amount of supersedeas bonds to stay proceedings to be given by each defendant was fixed at \$2,500.00, subject to approval by W. A. Westover, United States Commissioner for the Western District of Washington; and that, thereafter, on the 10th day of June, 1919, such bonds in said amount were duly filed in this court and were approved by the said United States Commissioner.

ON CONSIDERATION WHEREOF, the Court does hereby allow the writ of error prayed for, and it is further ordered that the said bonds of the said defendants in the sum of \$2,500.00 so given and approved, as aforesaid, are each hereby approved by the Court and each shall operate as a supersedeas and cost bond and stay all proceedings pending the hearing on said proceedings in error in the United States Circuit Court of Appeals.

JEREMIAH NETERER,

Judge. [91]

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**Writ of Error (Copy).**

UNITED STATES OF AMERICA.

The President of the United States of America, to the District Court of the United States, for the Western District of Washington, Southern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment before you, between the United States of America, plaintiff, and W. F. Toles, J. P. Symons, Bruce Richards and August Oess, defendants, a manifest error hath happened to



the damage of said defendants, Bruce Richards and August Oess, we being willing that such error, if any, hath happened, should be duly corrected, and full and speedy justice done to the plaintiff in error aforesaid, on this behalf do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, at the court-rooms of such court, in the city of San Francisco, State of California, together with this writ, so that you have the same at said place before the justices aforesaid on thirty days from the date of this writ. That the record and proceedings aforesaid being inspected, said Justices of said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 28th day of July, A. D. 1919.

[Seal of U. S. Dist. Court]

F. M. HARSHBERGER,  
Clerk of the District Court of the United States, for  
the Western District of Washington, Southern  
Division.

By Ed M. Lakin,  
Deputy Clerk.

The foregoing writ is hereby allowed this 28 day  
of July, A. D. 1919.

JEREMIAH NETERER,  
Judge. [92]

**Citation on Writ of Error (Copy).**

UNITED STATES OF AMERICA,—ss.

The President of the United States to the United States of America, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, in the State of California, within thirty (30) days from the date hereof, pursuant to a Writ of Error duly issued and now on file in the office of the clerk of the United States District Court for the Western District of Washington, Southern Division, wherein Bruce Richards and August Oess are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why so much of the judgment rendered against the said plaintiff in error as in said Writ of Error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable E. D. WHITE, Chief Justice of the Supreme Court of the United States, this 28th day of July, A. D. 1919.

JEREMIAH NETERER,  
United States District Judge. [93]

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**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

United States of America,  
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States

District Court for the Western District of Washington, do hereby certify and return that the foregoing is a true and correct transcript of the record and proceedings in the case of the United States of America, Plaintiff, versus W. F. Toles, J. P. Symons, Bruce Richards and August Oess, Defendants, No. 2728, in said District Court, as required by praecipe of counsel filed and shown herein and as the originals thereof appear on file and of record in my office in said District at Tacoma, and that the same constitutes my return on the annexed writ of error herein.

I further certify and return that I hereto attach and herewith transmit the original writ of error and the original citation on writ of error herein, together with acceptance of service thereon.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by and on behalf of the plaintiffs in error for making the record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fees (Sec. 828, R. S. U. S.) for making	
record and return, 235 folios at 15¢ each	\$35.25
Certificate of Clerk to Transcript, 3 folios at	
15¢ each and seal.....	.65
Clerk's fees for issuing Writ of Error, Cita-	
tion, recording bonds, etc.....	16.45
	<hr/>
Total.....	\$52.35

ATTEST my hand and the seal of said District

Court at Tacoma, in said District, this 20th day of August, A. D. 1919.

[Seal]

F. M. HARSHBERGER,  
Clerk.

By Ed M. Lakin,  
Deputy Clerk.

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*In the United States Circuit Court of Appeals for the  
Ninth Judicial Circuit.*

No. —.

BRUCE RICHARDS and AUGUST OESS,  
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,  
Defendant in Error.

**Writ of Error (Original).**

United States of America.

The President of the United States of America, to the District Court of the United States for the Western District of Washington, Southern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment before you, between the United States of America, Plaintiff, and W. F. Toles, J. P. Symons, Bruce Richards and August Oess, Defendants, a manifest error hath happened to the damage of said defendants, Bruce Richards and August Oess, we being willing that such error, if any, hath happened, should be duly corrected, and

full and speedy justice done to the plaintiff in error aforesaid, on this behalf do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, at the court-rooms of such court, in the city of San Francisco, State of California, together with this writ, so that you have the same at said place before the justices aforesaid on thirty days from the date of this writ. That the record and proceedings aforesaid being inspected, said Justices of said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 28th day of July, A. D. 1919.

[Seal] F. M. HARSHBERGER,  
Clerk of the District Court of the United States, for  
the Western District of Washington, Southern  
Division.

By Ed M. Lakin,  
Deputy Clerk.

The foregoing writ is hereby allowed this 28 day of July, A. D. 1919.

JEREMIAH NETERER,  
Judge.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals for the Ninth Judicial Circuit. Bruce Richards and August Oess, Plaintiffs in Error,

vs. United States of America, Defendant in Error.  
Writ of Error. Filed in the United States District  
Court, Western District of Washington, Southern  
Division. Jul. 28, 1919. F. M. Harshberger, Clerk.  
By Alice Huggins, Deputy.

Copy received July 28, 1919.

F. R. CONWAY,  
Assistant U. S. District Attorney.

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*In the United States Circuit Court of Appeals for the  
Ninth Judicial Circuit.*

No. —.

BRUCE RICHARDS and AUGUST OESS,  
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,  
Defendant in Error.

**Citation on Writ of Error (Original).**

United States of America,—ss.

The President of the United States to the United  
States of America, GREETING:

You are hereby cited and admonished to be and  
appear at the United States Circuit Court of Appeals  
for the Ninth Circuit to be holden at the city of San  
Francisco, in the State of California, within thirty  
(30) days from the date hereof, pursuant to a Writ  
of Error duly issued and now on file in the office of  
the clerk of the United States District Court for the  
Western District of Washington, Southern Division,

wherein Bruce Richards and August Oess are plaintiffs in error and you are defendant in error, to show cause, if any there be, why so much of the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable E. D. WHITE, Chief Justice of the Supreme Court of the United States, this 28th day of July, A. D. 1919.

JEREMIAH NETERER,  
United States District Judge.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals for the Ninth Judicial Circuit. Bruce Richards and August Oess, Plaintiffs in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed in the United States District Court, Western District of Washington, Southern Division. Jul. 28, 1919. F. M. Harshberger, Clerk. Alice Huggins, Deputy.

Copy received July 28, 1919.

F. R. CONWAY,  
Assistant U. S. District Attorney.

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[Endorsed]: No. 3381. United States Circuit Court of Appeals for the Ninth Circuit. Bruce Richards and August Oess, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the

United States District Court of the Western District  
of Washington, Southern Division.

Filed August 23, 1919.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.